

AGREEMENT ON SOCIAL SECURITY BETWEEN THE
UNITED STATES AND THE SWISS CONFEDERATION

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

AN AGREEMENT ON SOCIAL SECURITY BETWEEN THE UNITED
STATES OF AMERICA AND THE SWISS CONFEDERATION, PURSU-
ANT TO 42 U.S.C. 433(e)(1)



DECEMBER 9, 2013.—Message and accompanying papers referred to the
Committee on Ways and Means and ordered to be printed

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WASHINGTON : 2013

To the Congress of the United States:

Pursuant to section 233(e)(1) of the Social Security Act, as amended by the Social Security Amendments of 1977 (Public Law 95–216, 42 U.S.C. 433(e)(1)), I transmit herewith an Agreement on Social Security between the United States of America and the Swiss Confederation, signed at Bern on December 3, 2012, (the “U.S.-Swiss Agreement”). The Agreement consists of two instruments: a principal agreement and an administrative arrangement, and upon entry into force, will replace: the Agreement between the United States of America and the Swiss Confederation on Social Security with final protocol, signed July 18, 1979; the Administrative Agreement between the United States of America and the Swiss Confederation for the Implementation of the Agreement on Social Security of July 18, 1979, signed December 20, 1979; and the Supplementary Agreement between the two Contracting States, signed June 1, 1988.

The U.S.-Swiss Agreement is similar in objective to the social security agreements already in force with most of the European Union member states, Australia, Canada, Chile, Japan, Norway, and the Republic of Korea. Such bilateral agreements provide for limited coordination between the United States and foreign social security systems to eliminate dual social security coverage and taxation and to help prevent the lost benefit protection that can occur when workers divide their careers between two countries. The principal updates encompassed in the Agreement include amendments to rules for entitlement to Swiss disability pensions paid to ensure equality of treatments between U.S. and Swiss nationals, updates to personal information confidentiality provisions, and modifications necessary to take into account changes in U.S. and Swiss laws since 1988.

The U.S.-Swiss Agreement contains all provisions mandated by section 233 of the Social Security Act and other provisions that I deem appropriate to carry out the purposes of section 233, pursuant to section 233(c)(4) of the Social Security Act.

I also transmit, for the information of the Congress, a report prepared by the Social Security Administration explaining the key points of the U.S.-Swiss Agreement, along with a paragraph-by-paragraph explanation of the provisions of the principal agreement and administrative arrangement. Annexed to this report is the report required by section 233(e)(1) of the Social Security Act on the number of individuals affected by the Agreement and the effect of the Agreement on the estimated income and expenditures of the U.S. Social Security program. The Department of State and the Social Security Administration have recommended the U.S.-Swiss Agreement and related documents to me.

I commend the U.S.-Swiss Agreement on Social Security and related documents.

BARACK OBAMA.

THE WHITE HOUSE, *December 9, 2013*.

AGREEMENT ON SOCIAL SECURITY
BETWEEN
THE SWISS CONFEDERATION
AND
THE UNITED STATES OF AMERICA

The Government of the Swiss Confederation and

the Government of the United States of America,

*Being desirous of regulating the relationship between their two countries in the field of
Social Security, have agreed as follows:*

PART I
Definitions and Laws

ARTICLE 1
Definitions

1. For the purposes of this Agreement:
 - a. "Territory" means, as regards the United States, the States thereof, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam and American Samoa, and as regards Switzerland, the territory of the Swiss Confederation;
 - b. "National" means, as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act, as amended, and as regards Switzerland, a person of Swiss nationality;
 - c. "Laws" means the laws and regulations specified in Article 2 of this Agreement;
 - d. "Competent Authority" means, as regards the United States, the Commissioner of Social Security, and as regards Switzerland, the Federal Social Insurance Office;
 - e. "Agency" means, as regards the United States, the Social Security Administration, and as regards Switzerland, a compensation fund of the Old-Age and Survivors Insurance and the other bodies responsible for the administration of Disability Insurance;

- f. "Period of coverage" means a period of payment of contributions or a period of earnings from employment or self-employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;
- g. "Benefits" means any benefit provided for in the laws specified in Article 2 of this Agreement;
- h. "Family members" and "survivors" mean, in relation to Switzerland, family members and survivors, whose rights are derived from a national of a Contracting State, from a refugee or from a stateless person;
- i. "Stateless person" means a person defined as a stateless person in Article 1 of the Convention Relating to the Status of Stateless Persons dated September 28, 1954;
- j. "Refugee" means a person defined as a refugee in Article 1 of the Convention Relating to the Status of Refugees dated July 28, 1951, and the Protocol to that Convention dated January 31, 1967; and
- k. "Personal Data" means any information relating to a specific (identified or identifiable) person, as well as any information which can be used to distinguish or trace an individual's identity. This includes, but is not limited to, the following: any individual identifier; citizenship, statelessness or refugee status; benefits, eligibility, or other claims information; contact information; medical information or lay information used in a medical determination; information about marital, familial or personal relationships; and information pertaining to work, financial or economic status.

2. Any term not defined in this Article shall have the meaning assigned to it in the applicable laws.

ARTICLE 2

Material Scope

1. For the purposes of this Agreement, the applicable laws are:
 - a. as regards Switzerland,
 - the Federal law on old-age and survivors' insurance;
 - the Federal law on disability insurance; and
 - b. as regards the United States of America, the laws governing the Federal old-age, survivors, and disability insurance program:
 - Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title, and regulations pertaining to those sections,
 - Chapters 2 and 21 of the Internal Revenue Code of 1986 and regulations pertaining to those chapters.
2. Laws within the meaning of paragraph 1 shall not include treaties or other international agreements or supranational legislation on Social Security concluded between one Contracting State and a third State or laws or regulations promulgated for their specific implementation.

3. Except as provided in the following sentence, this Agreement shall also apply to legislation which amends or supplements the laws specified in paragraph 1. This Agreement shall apply to legislation or regulations which extend the existing laws to other categories of beneficiaries or which involve a new branch of Social Security only if both Contracting States so agree.

PART II

General Provisions

ARTICLE 3

Personal Scope

Unless otherwise provided, this Agreement shall apply to:

- a. nationals of either Contracting State,
- b. refugees who reside in either Contracting State,
- c. stateless persons who reside in either Contracting State,
- d. other persons, including family members and survivors, with respect to the rights they derive from persons in (a), (b) and (c) of this Article, and
- e. for the application of Articles 7, 8 paragraph 3, 9 to 12, 20 to 26 and 29, to any person regardless of nationality.

ARTICLE 4

Equality of Treatment

1. Unless otherwise provided in this Agreement, persons designated in Article 3 (a), (b) or (c) who reside in the territory of a Contracting State shall, in the application of the laws of that Contracting State, receive equal treatment with nationals of that Contracting State.
2. Unless otherwise provided in this Agreement, family members and survivors of a national of a Contracting State who reside in the territory of a Contracting State shall, in the application of the laws of that Contracting State, receive equal treatment with family members and survivors of a national of that Contracting State.

ARTICLE 5

Portability of Benefits

Unless otherwise provided in this Agreement, benefits payable under the laws of one of the Contracting States shall be paid to nationals of the other Contracting State as well as to their family members and survivors, who are resident in the territory of a third State, on the same terms and to the same extent as to the nationals of the first Contracting State resident in the territory of this third State or to their family members and survivors.

ARTICLE 6

Application of National Laws

This Agreement shall not prevent the application of provisions of the laws of either Contracting State concerning benefits that are more favorable to the persons listed in

Article 3.

PART III
Provisions Concerning Applicable Laws

ARTICLE 7
Coverage Provisions

1. Unless otherwise provided in Part III of this Agreement, a person of any nationality who is employed in the territory of either Contracting State shall be subject, with respect to employment in that territory, to the laws on compulsory coverage of the Contracting State where the person is employed and, in determining the amount of contributions payable under the laws of that Contracting State, no account shall be taken of any income the person may receive from employment in the territory of the other Contracting State.
2. Where a person of any nationality is in the service of an employer having a place of business in the territory of a Contracting State and is sent by that employer to the territory of the other Contracting State for a period not expected to exceed 5 years, the person shall be subject to the laws on compulsory coverage of only the first Contracting State as if he or she were employed in its territory. For purposes of applying this paragraph in the case of an employee who is sent from the territory of the United States by an employer in that territory to the territory of Switzerland, that employer and an affiliated company of the employer (as defined under the laws of the United States) shall be considered one and the same, provided that the employment would have been covered under United States laws absent this Agreement.
3. Paragraph 2 of this Article shall apply where a person who has been sent by his

or her employer from the territory of a Contracting State to the territory of a third State, and who is compulsorily covered under the laws of that Contracting State while employed in the territory of the third State, is subsequently sent by that employer from the territory of the third State to the territory of the other Contracting State.

4. A person of any nationality who is self-employed in the territory of one or both Contracting States and who is a resident of one Contracting State shall be subject to the laws on compulsory coverage of only the Contracting State in whose territory the person resides.
5. Where the same activity is considered to be self-employment under the laws of one Contracting State and employment under the laws of the other Contracting State, that activity shall be subject to the laws of only the first Contracting State if the person is a resident of that State, and to the laws of only the other Contracting State in any other case.

ARTICLE 8

Government Employment

1. Part III of this Agreement shall not apply to the categories of persons listed in the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, and of the Vienna Convention on Consular Relations of April 24, 1963.
2. Nationals of the United States employed by the Government of the United States in the territory of Switzerland who are not exempt from Swiss laws by virtue of the Conventions mentioned in paragraph (1), shall be subject to the laws on compulsory coverage of only the United States. For the purpose of this paragraph, employment by the United States Government includes employment by an instrumentality thereof.

3. An employee of any nationality of a public service in Switzerland who is posted to the territory of the United States shall be subject only to Swiss laws.

ARTICLE 9

Airline Employees

Traveling employees of any nationality of air transportation companies who perform work in the territories of both Contracting States and who would otherwise be covered under the laws of both Contracting States shall, with respect to that work, be subject to the laws of only the Contracting State in the territory of which the company has its headquarters. However, if such employees reside in the territory of the other Contracting State, they shall be subject to the laws of only that State.

ARTICLE 10

Seafarers

A person of any nationality employed as an officer or member of a crew on a vessel which flies the flag of one Contracting State and who would otherwise be covered under the laws of both Contracting States shall be subject to the laws of only the Contracting State whose flag the vessel flies. The activity pursued on a vessel which flies the Swiss flag shall be deemed to be an activity pursued on the territory of Switzerland. A vessel which flies the flag of the United States is one defined as an American vessel under the laws of the United States.

ARTICLE 11

Family Members

1. Where in application of Part III a person of any nationality remains subject to the laws of one Contracting State while working in the territory of the other Contracting State, the same applies to the spouse and the children, of any nationality, residing with that person in the territory of the second Contracting State, provided that they are not gainfully employed themselves in the territory of this Contracting State.
2. Where in the application of paragraph 1 Swiss laws apply to the spouse and children, they are insured in the Swiss old-age, survivors' and disability insurance.

ARTICLE 12

Exceptions

The Competent Authority of one Contracting State may grant an exception to the provisions of Part III of this Agreement or an extension of the period in Article 7(2) of this Agreement in the interest of particular persons or categories of persons, if the Competent Authority of the other Contracting State agrees, provided that the affected person or persons will be subject to the laws on compulsory coverage of one of the Contracting States.

PART IV
Provisions on Benefits

CHAPTER 1
Application of Swiss Laws

ARTICLE 13
Exceptions to Equality of Treatment

Article 4 shall not apply to Swiss laws:

- a. on the voluntary old-age, survivors' and disability insurance;
- b. on old-age, survivors', and disability insurance of Swiss nationals who are gainfully occupied abroad in the service of the Swiss Confederation or organizations in the meaning of subparagraph 1(c) of Article 1a of the Federal law on old-age and survivors' insurance; and
- c. on the voluntary old-age, survivors' and disability insurance for Swiss nationals employed by organizations in the meaning of subparagraph 4(b) of Article 1a of the Federal law on old-age and survivors' insurance.

ARTICLE 14
Totalization for Swiss Benefits

- 1. Where a person does not meet the requirements for entitlement to an ordinary pension from the Swiss disability insurance solely on the basis of the periods of coverage completed according to Swiss laws, the agency shall take into account, for the acquisition of the right to benefits, United States periods of coverage, as

long as these periods do not overlap with those completed according to the Swiss laws.

2. Where the periods of coverage completed according to Swiss laws do not amount to one year, paragraph 1 does not apply.
3. The amount of the benefits shall be determined solely on the basis of the periods of coverage completed according to Swiss laws. The calculation is carried out according to Swiss laws.

ARTICLE 15

Rehabilitation Measures

1. United States nationals who, immediately prior to eligibility for rehabilitation measures have been liable to pay contributions to the Swiss old-age, survivors' and disability insurance, shall be entitled to such measures as long as they are physically present in Switzerland.
2. United States nationals, who are not gainfully employed and who, immediately prior to eligibility for rehabilitation measures have not been liable to pay contributions to the Swiss old-age, survivors' and disability insurance because of their age, but nevertheless have been insured under this insurance, shall be entitled to such measures as long as they are domiciled in Switzerland, if, immediately prior to eligibility for the measures, they have resided in Switzerland without interruption for at least one full year. Minor children shall, moreover, also be entitled to such measures if they are domiciled in Switzerland and if they have either been born disabled there or have resided there without interruption since birth.
3. United States nationals residing in Switzerland who leave Switzerland for a

period not exceeding three months shall not be deemed to have interrupted their residence in Switzerland within the meaning of paragraph 2.

4. A child who is a United States national and who is born disabled in the United States to a mother who:
 - a. is domiciled and insured in Switzerland; and
 - b. was absent from Switzerland for not more than 2 months before the birth; shall be treated as a child born disabled in Switzerland. In the case of a congenitally handicapped child, Swiss disability insurance shall also be responsible for meeting expenses incurred abroad during the first three months after the birth to the same extent as it would have been required to meet these in Switzerland.
5. Paragraph 4 shall apply mutatis mutandis to a child born disabled outside the territory of the Contracting States; in such case, the Swiss disability insurance shall be responsible for meeting expenses incurred in the third State only if the measures had to be awarded there on an emergency basis due to the state of health of the child.

ARTICLE 16

Extraordinary Pensions

1. United States nationals shall, under the same conditions as Swiss nationals, be entitled to receive a Swiss extraordinary survivors' pension, disability pension or old-age pension which replaces a disability or survivors' pension if, immediately before the date from which they claim the pension, they have resided in Switzerland for a continuous period of not less than five years.
2. For the purpose of paragraph 1:

- a. no account shall be taken of any period during which the persons concerned were exempted from the Swiss old-age, survivors' and disability insurance; and
 - b. a period of residence in Switzerland shall not be regarded as interrupted if the absence from Switzerland is not more than three months in any calendar year. The period of three months may be extended in exceptional cases.
3. The refund of contributions paid under Swiss laws and lump sums in accordance with Article 17 shall not prevent the granting of extraordinary pensions in accordance with paragraph 1. However, in such cases, the lump sum paid out shall be deducted from the amount of pension to be paid out.

ARTICLE 17

Lump Sum Payments

1. If a United States national or his or her survivor who does not reside in Switzerland is entitled to an ordinary partial pension under the Swiss old-age and survivors' insurance which is equal to not more than 10 percent of the corresponding ordinary full pension, that person shall be granted instead of the partial pension, a lump sum which corresponds to the capitalized value of the pension payable under Swiss law when the insured event occurs. If a U.S. national or his or her survivor, who received such a partial pension, permanently leaves Switzerland, that person shall also be granted a lump sum which corresponds to the capitalized value of that pension at the time of departure.
2. If the ordinary partial pension is equivalent to more than 10 percent but not more than 20 percent of the corresponding ordinary full pension, a U.S. national or his

or her survivor who does not reside in Switzerland or who is permanently leaving Switzerland may opt between having the pension paid or a lump sum. This option shall be made during the course of the procedure to determine the pension if the entitled person is staying outside Switzerland when the insured event occurs, or when leaving the country, if the entitled person already received a pension in Switzerland.

3. In the case of a married couple where both spouses have been insured under the Swiss insurance, the lump sum is paid only when both spouses are eligible to a pension.
4. When the lump sum has been paid out by the Swiss agency no further claims can be asserted against that agency in respect of previous contributions paid or of corresponding periods of coverage.
5. Paragraphs 1 to 4 shall apply *mutatis mutandis* to ordinary pensions of the Swiss disability insurance provided that:
 - a. the person who has entitlement has attained the age of 55 years; and
 - b. the Swiss insurance does not require any further verification of the fulfillment of the conditions concerning the disability of that person.

CHAPTER 2

Application of United States Laws

ARTICLE 18

United States Benefits

1. Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient periods of coverage to satisfy the requirements for entitlement to benefits under United States laws, periods of coverage completed under Swiss laws shall be taken into account to the extent they do not coincide with calendar quarters already credited as quarters of coverage under United States laws.
2. In determining eligibility for benefits under paragraph 1 of this Article, the agency of the United States shall credit one quarter of coverage for every three months of coverage certified as creditable by the agency of Switzerland to the extent that the months do not coincide with calendar quarters already credited as quarters of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.
3. Where entitlement to a benefit under United States laws is established according to the provisions of paragraph 1, the agency of the United States shall compute a pro rata primary insurance amount in accordance with United States laws based on:
 - a. the person's average earnings credited exclusively under United States laws and
 - b. the ratio of the duration of the person's periods of coverage credited under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws.

Benefits payable under United States laws shall be based on the pro rata primary insurance amount.

4. Entitlement to a benefit from the United States which results from paragraph 1 shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to a higher benefit without the need to invoke the provision of paragraph 1.
5. Articles 4 and 5 of this Agreement shall be applied by the United States in a manner consistent with section 233(c)(4) of the United States Social Security Act.

PART V

Miscellaneous Provisions

ARTICLE 19

Administrative Arrangements

The Competent Authorities of the two Contracting States shall:

- a. Make all necessary administrative arrangements for the implementation of this Agreement and designate liaison agencies;
- b. Define the procedures for reciprocal administrative assistance, including the allocation of expenses associated with obtaining medical, administrative, and other evidence required for the application of this Agreement;

- c. Communicate to each other information concerning the measures taken for the application of this Agreement; and
- d. Communicate to each other, as soon as possible, information concerning all changes in their respective laws which may affect the application of this Agreement.

ARTICLE 20

Mutual Assistance

The Competent Authorities and the agencies of the Contracting States, within the scope of their respective authorities, shall assist each other in implementing this Agreement. This assistance shall be free of charge, subject to exceptions to be agreed upon in an administrative arrangement.

ARTICLE 21

Confidentiality of Exchanged Information

- 1. Unless otherwise required by the national statutes of a Contracting State, personal data transmitted in accordance with this Agreement to that Contracting State by the other Contracting State shall be used for purposes of administering this Agreement and the laws in Article 2 of this Agreement. The receiving Contracting State's national statutes for the protection of privacy and confidentiality of personal data and the provisions of this Agreement shall govern such use.
- 2. The Competent Authorities of the Contracting States shall inform each other about all amendments to their national statutes regarding the protection of

privacy and confidentiality of personal data that affect the transmission of personal data.

3. Any subject may request, and the Competent Authority or agency requesting or transmitting personal data must disclose to that subject upon such request, the content, receiving institution, and duration of use of the subject's personal data and the purpose and legal grounds for which such data were used or requested.
4. Agencies shall take all reasonable steps to ensure that transmitted personal data are accurate and limited to data required to fulfill the receiving agency's request. In accordance with their respective national statutes, agencies shall correct or delete any inaccurate transmitted personal data and any data not required to fulfill the receiving agency's request, and immediately notify the other agency of such correction or deletion. This shall not limit a subject's right to request such correction or deletion directly from the agencies.
5. Both the transmitting and the receiving agency shall effectively protect personal data against unauthorized or illegal access, alteration, or disclosure.
6. Unless otherwise required by the national statutes of a Contracting State, employers' information transmitted between Contracting States in accordance with this Agreement shall be used for purposes of administering this Agreement and the laws in Article 2 of this Agreement. The receiving Contracting State's national statutes for the protection and confidentiality of employers' information and the provisions of this Agreement shall govern such use.

ARTICLE 22

Documents

1. Where the laws of a Contracting State provide that any document which is

submitted to the Competent Authority or an agency of that Contracting State shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to corresponding documents which are submitted to the Competent Authority or an agency of the other Contracting State in the application of this Agreement.

2. Copies of documents which are certified as true and exact copies by the agency of one Contracting State shall be accepted as true and exact copies by the agency of the other Contracting State, without further certification. The agency of each Contracting State shall be the final judge of the probative value of the evidence submitted to it from whatever source.

ARTICLE 23

Correspondence and Language

1. The Competent Authorities and agencies of the Contracting States may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in the writer's language.
2. An application or document may not be rejected by a Competent Authority or agency of a Contracting State solely because it is in a language of the other Contracting State.
3. The notices of decisions of an agency or a tribunal which, under the laws of a Contracting State, require personal delivery may be transmitted directly by registered letter to a person in the territory of the other Contracting State.

ARTICLE 24

Applications

1. A written application for benefits filed with an agency of one Contracting State shall protect the rights of the claimants under the laws of the other Contracting State if the applicant requests that it be considered an application under the laws of the other Contracting State.
2. If an applicant has filed a written application for benefits with an agency of one Contracting State and has not explicitly requested that the application be restricted to benefits under the laws of that Contracting State, the application shall also protect the rights of the claimants under the laws of the other Contracting State if the applicant provides information at the time of filing indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Contracting State.
3. An applicant may request that an application submitted to an agency of one Contracting State be effective on a different date in the other Contracting State within the limitations of and in conformity with the laws of the other Contracting State.

ARTICLE 25

Appeals and Time Limits

1. A written appeal of a determination made by an agency of one Contracting State may be validly filed with an agency of the other Contracting State. The written appeal shall be decided according to the procedure and laws of the Contracting State whose decision is being appealed.
2. Any claim, notice or written appeal which must be filed within a given period of

time with an agency of one Contracting State shall be considered to have been timely filed if the claim, notice or written appeal has been filed within such period with a corresponding agency of the other Contracting State. In such case, the agency with which the claim, notice or written appeal has been filed shall indicate the date of receipt of the document on this document and transmit it without delay to the agency of the other Contracting State.

3. With respect to Switzerland, appeals which must be filed within a given period of time with a tribunal in Switzerland shall be considered to have been timely filed if it is shown that the appeal has been filed within such period with the agency or a court in the United States.

ARTICLE 26

Currency

The amount of any benefit due in accordance with the provisions of this Agreement may be paid in the currency of the Contracting State whose agency is responsible for such benefit.

ARTICLE 27

Resolution of Disagreements

Any disagreement regarding the interpretation or application of this Agreement shall be resolved by consultation between the Competent Authorities.

ARTICLE 28

Supplementary Agreements

This Agreement may be amended in the future by supplementary agreements which, from their entry into force, shall be considered an integral part of this Agreement. Such agreements may be given retroactive effect if they so specify.

PART VI

Transitional and Final Provisions

ARTICLE 29

Transitional Provisions

1. This Agreement shall also apply to events which occurred prior to its entry into force that are relevant to rights under the laws in Article 2 of this Agreement.
2. This Agreement shall not establish any claim to payment of a benefit for any period before its entry into force, or to a lump-sum death benefit if the person died before its entry into force.
3. Consideration shall be given to any period of coverage and any period of residence under the laws of either Contracting State occurring before the entry into force of this Agreement, in order to determine the right to benefits under this Agreement.
4. This Agreement shall not apply to rights settled by a lump-sum payment or refund of contributions.

5. Determinations made before the entry into force of this Agreement shall not affect rights arising under it.
6. This Agreement shall not result in the reduction of benefit amounts because of its entry into force.
7. Upon the entry into force of this Agreement, the Agreement between the United States of America and the Swiss Confederation on Social Security and the Protocol of July 18, 1979, as well as the Supplementary Agreement between the two Contracting States of June 1, 1988, shall be terminated and replaced by this Agreement.
8. Any benefit acquired by a person, or coverage determination issued, in accordance with the provisions of the Agreement between the United States of America and the Swiss Confederation on Social Security of July 18, 1979, shall be maintained.
9. Any claim to benefits made but not finally adjudicated at the date upon which this Agreement comes into force shall be adjudicated according to the provisions of the Agreement between the United States of America and the Swiss Confederation on Social Security of July 18, 1979, if this gives the claimant a more favorable result.

ARTICLE 30


Entry into Force, Duration and Termination


1. This Agreement shall enter into force on the first day of the third month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Agreement.

2. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its termination is given by one of the Contracting States to the other Contracting State.
3. If this Agreement is terminated, rights regarding entitlement to or payment of benefits acquired under it shall be retained; the Contracting States shall make arrangements dealing with rights in the process of being acquired.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed the present Agreement.

DONE at ^{BERN} *Suitz* on *3 December 2012* in duplicate, in the English and French languages, both texts being equally authentic.


FOR THE GOVERNMENT
OF THE SWISS CONFEDERATION:


FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

**ADMINISTRATIVE ARRANGEMENT
FOR THE IMPLEMENTATION OF THE AGREEMENT
BETWEEN THE SWISS CONFEDERATION AND
THE UNITED STATES OF AMERICA
ON SOCIAL SECURITY**

In conformity with Article 19 (a) of the Agreement on Social Security concluded on
..3 December 2012..... between Switzerland and the United States of
America, hereinafter referred to as "the Agreement", the following provisions have been
agreed upon:

**Chapter 1
General Provisions**

Article 1

Terms used in this Administrative Arrangement shall have the same meaning as in the
Agreement.

Article 2

1. Liaison agencies for the implementation of the Agreement shall be:

- a. for the United States, the Social Security Administration; and
 - b. for Switzerland, the Swiss Compensation Office and the Disability Insurance Office for insured people living abroad.
2. The Swiss Competent Authority or, with its consent, the Swiss liaison agency, and the United States liaison agency shall agree upon joint administrative measures and forms necessary for the implementation of the Agreement and this Administrative Arrangement.

Chapter 2

Provisions Concerning Coverage

Article 3

1. Where the laws of one Contracting State are applicable in accordance with any of the provisions of Part III of the Agreement, the agency of that Contracting State, upon request of the employer or self-employed person, shall issue a certificate stating that the employee or self-employed person is subject to those laws and indicating the duration for which the certificate shall be valid. This certificate shall be proof that the employee or self-employed person is exempt from the laws on compulsory coverage of the other Contracting State.
2. The certificate referred to in paragraph 1 shall be issued:

in the United States: by the Social Security Administration; and

in Switzerland: by the competent compensation fund of the Old-Age and Survivors Insurance.

3. Requests for an extension of the period of detachment or an exception according to Article 12 of the Agreement shall be submitted to the Competent Authority of the Contracting State whose coverage is requested.
4. The agency of a Contracting State which issues a certificate referred to in paragraph 1 of this Article shall furnish a copy of the certificate or agreed upon information from the certificate to the liaison agency of the other Contracting State as needed by the agency of the other Contracting State.

Chapter 3

Provisions Concerning Benefits

Article 4

- 1 In cases where Article 24 of the Agreement applies, the liaison agency of the Contracting State which has received an application for benefits under its laws shall inform the liaison agency of the other Contracting State of this fact without delay, using forms established for this purpose. It shall also transmit documents and such other available information as may be necessary for the agency of the other Contracting State to establish the right of the applicant to benefits according to the provisions of Part IV of the Agreement. In the case of an application for disability benefits it shall, in particular, transmit all relevant medical evidence in its possession concerning the disability of the applicant.
2. The liaison agency of a Contracting State which receives an application filed with an agency of the other Contracting State shall without delay provide the liaison agency of the other Contracting State with such evidence and other available information as may be required to complete action on the claim.

3. The agency of the Contracting State with which an application for benefits has been filed shall verify the accuracy of the information pertaining to the applicant and the applicant's family members. The types of information to be verified shall be agreed upon by the liaison agencies.

Article 5

In the application of Article 18 of the Agreement, the Swiss liaison agency shall notify the United States liaison agency of the months in which a person made contributions during any year in which periods of coverage were completed under Swiss laws. A record of the total number of months of contributions made in specific calendar years shall be provided where the actual months of coverage are not known.

Chapter 4

Miscellaneous Provisions

Article 6

1. In accordance with measures to be agreed upon pursuant to Article 2 of this Administrative Agreement, the agency of one Contracting State shall, upon request of the agency of the other Contracting State, furnish available information relating to the claim of any specified individual for the purpose of administering the Agreement or the laws specified in Article 2(1) of the Agreement.
2. For the purpose of facilitation of the implementation of the Agreement and this Administrative Arrangement, the liaison agencies may agree on measures for the

provision and transmission of the electronic exchange of data.

Article 7

The liaison agencies of the two Contracting States shall exchange statistics on the number of certificates issued under Article 3 of this Administrative Arrangement and on the payments made to beneficiaries under the Agreement for each calendar year in a form to be agreed upon. The data shall include the number of beneficiaries and the total amount of benefits, by type of benefit.

Article 8

1. Where administrative assistance is requested under Article 20 of the Agreement, expenses other than regular personnel and operating costs of the Competent Authorities and agencies providing the assistance shall be reimbursed, except as may be agreed to by the Competent Authorities or liaison agencies of the Contracting States.
2. Where the agency of a Contracting State requires that a claimant or beneficiary submit to a medical examination, such examination, if requested by that agency, shall be arranged by the agency of the Contracting State in which the claimant or beneficiary resides, in accordance with the rules of the agency making the arrangements and at the expense of the agency which requests the examination.
3. Upon request, the agency of either Contracting State shall furnish without expense to the liaison agency of the other Contracting State any medical information and documentation in its possession relevant to the disability of the claimant or beneficiary.


4. Amounts owed under paragraphs 1 and 2 shall be reimbursed upon presentation of a detailed statement of expenses.

Article 9

This Administrative Arrangement shall enter into force on the date of entry into force of the Agreement and shall have the same period of validity.

DONE at *Bern, Switzerland* on *3 December 2012*, in duplicate
in the English and French languages, the two texts being equally authentic.

For the Competent Authority
of Switzerland:



For the Competent Authority
of the United States of America:



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Text in **bold type** indicates provisions of the new U.S.-Swiss Social Security agreement that differ significantly in wording or substance from the corresponding provisions of the original U.S.-Swiss Social Security agreement signed July 18, 1979, as amended June 1, 1988.

AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND THE SWISS CONFEDERATION
ON SOCIAL SECURITY

The Government of the United States of America and
the Government of the Swiss Confederation,

Being desirous of regulating the relationship between their two
countries in the field of Social Security, have agreed as follows:

United States and Swiss officials signed the first U.S.-Swiss Social Security agreement (TIAS 9830) on July 18, 1979, and it entered into force on November 1, 1980. A supplementary agreement (TIAS 12126), amending a number of provisions in the original agreement, was signed on June 1, 1988, and became effective October 1, 1989. U.S. and Swiss authorities have now negotiated a new agreement that replaces the original and supplementary agreements. The text of the new agreement is on the left column of this document with explanatory comments on the right.

The primary purpose of the new agreement is to adapt to changes in Swiss law that led to inequities in the treatment of U.S. and Swiss nationals. Additionally, the language in parts of the original agreement as amended was no longer accurate.

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PART I

Definitions and Laws

ARTICLE 1

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Definitions

1. For the purposes of this Agreement:

- a. "territory" means, as regards the United States, the States thereof, the District of Columbia, the Commonwealth of Puerto Rico, **the Commonwealth of the Northern Mariana Islands, the United States** Virgin Islands, Guam and American Samoa, and as regards Switzerland, the territory of the Swiss Confederation;

- b. "national" means, as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act, as amended, and as regards Switzerland, a person of Swiss nationality;

Article 1 defines key terms used in the Agreement.

The definition of United States "territory" in Article 1.1 of the original U.S.-Swiss Social Security agreement is identical to the definition of "United States" in Title II of the Social Security Act ("Act") at section 210(i). That definition includes the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam and American Samoa, but not the Northern Mariana Islands (NMI). However, the Covenant establishing the NMI Commonwealth in political union with the United States provides that the U.S. Social Security program applies to the NMI as it applies in Guam. Because all U.S. Social Security agreements apply to Guam, the U.S. Social Security Administration (SSA) began applying the agreements to the NMI as of January 1, 1987, when the U.S. Social Security program first extended there. Article 1.1 of this new agreement makes clear that the definition of United States "territory" includes the NMI.

The definition of Swiss territory remains unchanged and means the 23 cantons of Switzerland.

Under section 101(a)(22) of the Immigration and Nationality Act, "The term 'national of the United States' means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States." Those in category (B) include natives of American Samoa.

A Swiss national means any person to whom Swiss law accords nationality, including, but not limited to, a person who carries a valid Swiss passport or other valid identity document designating the person as a Swiss national.

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- c. "laws" means the laws and regulations specified in Article 2 of this Agreement;
- d. "Competent Authority" means, as regards the United States, **the Commissioner of Social Security**, and as regards Switzerland, the Federal Social Insurance Office;
- e. "Agency" means, as regards the United States, the Social Security Administration, and as regards Switzerland, a compensation fund of the Old-Age and Survivors Insurance and the other bodies responsible for the administration of Disability Insurance;

The new agreement updates references to the Immigration and Nationality Act of 1952 in Article 1.1 of the original agreement by removing "of 1952."

The term "laws," as used in the Agreement, refers to the social security laws and regulations of each country, *e.g.*, pertaining to old-age, survivors and disability insurance as set forth in Article 2.

"Competent Authority," as used throughout this Agreement, refers to the government official or body in each country with ultimate responsibility for administering the social security program, including the provisions of the Agreement.

The phrase "the Commissioner of Social Security" updates the reference to "the Secretary of Health, Education, and Welfare."

"Agency," as used in the Agreement, refers to the administrative body in each country responsible for taking and processing claims and making coverage determinations under each country's social security laws. SSA is the Agency for the United States. However, this Agreement does not affect the U.S. Internal Revenue Service's responsibility for determining social security tax liability in light of SSA coverage determinations under the Agreement.

Administration of the Swiss old-age, survivors, and disability insurance program is decentralized and entrusted to a number of different compensation funds located throughout Switzerland. These are responsible for collecting contributions, maintaining individual accounts and determining entitlement to and the amount of pensions. There are also numerous commissions and regional offices responsible for making disability determinations and administering the rehabilitation program under Swiss disability insurance. Under the Agreement, each of these Swiss funds, commissions, and offices is included within the term

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"Agency." However, for purposes of administrative liaison, Article 19 of the Agreement requires and authorizes the Competent Authorities to name liaison agencies. Article 2 of the Administrative Arrangement designates these as the U.S. Social Security Administration and, for Switzerland, the Swiss Compensation Office and the Disability Insurance Office for insured people living abroad.

f. "period of coverage" means a period of payment of contributions or a period of earnings from employment or self-employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;

"Period of coverage" means any period that the social security laws of either country credit for purposes of determining benefit eligibility, including periods of payment of contributions and periods of covered employment and self-employment.

g. "benefit" means any benefit provided for in the laws specified in Article 2 of this Agreement;

"Benefit" refers to old-age, survivors, and disability benefits provided under the social security laws of either country. "Benefit" includes pensions payable under the social security laws of Switzerland. With respect to the United States, the term also includes the lump-sum death payment under section 202(i) of the Act, but excludes special age-72 payments provided for certain uninsured persons under section 228 of the Act.

The phrase "in Article 2 of this Agreement" adds precision and clarity.

h. "family members" and "survivors" mean, in relation to Switzerland, family members and survivors, whose rights are derived from a national of a Contracting State, from a refugee or from a stateless person;

Article 1.1(h) consolidates Articles 1.8 and 1.9 from the previous Agreement into one unilateral paragraph defining family members and survivors for purposes of benefit payments with respect to Switzerland. U.S. laws do not provide generally applicable definitions of these terms and do not limit benefit payments to family members and survivors of nationals, refugees, and stateless persons. The Agreement creates benefit rights for people in these categories who are not Swiss nationals, but are the dependents or survivors of Swiss nationals; the definitions limit the

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payment of dependent and survivor benefits to people who fall into one of the various categories of family member or survivor specified in Swiss laws.

- i. "stateless person" means a person defined as a stateless person in Article 1 of the Convention Relating to the Status of Stateless Persons dated September 28, 1954;
- j. "refugee" means a person defined as a refugee in Article 1 of the Convention Relating to the Status of Refugees dated July 28, 1951, and the Protocol to that Convention dated January 31, 1967; and
- k. "personal data" means any information relating to a specific (identified or identifiable) person, as well as any information which can be used to distinguish or trace an individual's identity. This includes, but is not limited to, the following: any individual identifier; citizenship, statelessness or refugee status; benefits, eligibility, or other claims information; contact information; medical information or lay information used in a medical determination; information about marital, familial or personal relationships; and information pertaining to work, financial or economic status.

The Convention relating to the Status of Stateless Persons defines a stateless person as "a person who is not considered as a national by any State under the operation of its law."

The Convention relating to the Status of Refugees, in conjunction with the 1967 Protocol thereto, defines as a refugee any person who "...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence[...], is unable or, owing to such fear, is unwilling to return to it."

"Personal data" refers to personally identifiable information. Since there is no definition of "personal data" in the Act, this term incorporates the essential elements of the definition of "information" in the Code of Federal Regulations section applying to SSA at 20 CFR 401.25.

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2. Any term not defined in this Article shall have the meaning assigned to it in the applicable laws.

Each country will assign to any undefined terms used in the Agreement the same meaning given under its social security laws.

ARTICLE 2

Material Scope

1. For the purposes of this Agreement, the applicable laws are:
- a. as regards Switzerland,
 - the Federal law on old-age and survivors' insurance;
 - the Federal law on disability insurance; and
 - b. as regards the United States of America, the laws governing the Federal old-age, survivors, and disability insurance program:
 - Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title, and regulations pertaining to those sections,

Article 2.1 specifies the laws to which the Agreement applies.

For Switzerland, it applies to all Federal laws dealing with old-age, survivors, and disability insurance. These include the Federal Law on Old-Age and Survivors' Insurance (LAVS) of December 20, 1946, the Federal Law on General Provisions concerning Legislation on Social Insurances of October 6, 2000, and the Federal Law on Invalidity Insurance of June 19, 1959.

The Agreement does not apply to other branches of the Swiss social security program. However, a person must have coverage under LAVS to have coverage under Swiss health insurance, accident and occupational disease insurance, and unemployment insurance. Therefore, workers who do not have coverage under LAVS under the provisions of Part III of this Agreement will also not contribute to these Swiss programs.

For the United States, the Agreement applies to title II of the U.S. Social Security Act and the corresponding tax laws (the Federal Insurance Contributions Act (FICA) and the Self-Employment Contributions Act of 1954 (SECA)), as amended, and any regulations pertaining to those laws. The Agreement does not apply to Medicare provisions (sections 226 and 226A of the Act) or provisions for special payments to uninsured individuals age 72 or over under section 228 of the Act. Persons to whom the Agreement applies who qualify without application of this Agreement for Medicare hospital insurance or age-72 payments

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- Chapters 2 and 21 of the Internal Revenue Code of 1986 and regulations pertaining to those chapters.
2. Laws within the meaning of paragraph 1 shall not include treaties or other international agreements **or supranational legislation on Social Security** concluded between one Contracting State and a third State or laws or regulations promulgated for their specific implementation.
3. **Except as provided in the following sentence, this Agreement shall also apply to legislation which amends or supplements the laws specified in paragraph 1. This Agreement shall apply to legislation or regulations which extend the existing laws to other categories of beneficiaries or which involve a new branch of Social Security only if both Contracting States so agree.**

will be entitled to receive such benefits.

Although the Agreement does not apply to Medicare, a worker who is subject only to Swiss laws by virtue of Part II of the Agreement will be exempt not only from U.S. retirement, survivors and disability insurance contributions but also from health insurance contributions under FICA and SECA. The new agreement updates a reference to the "Internal Revenue Code of 1954" to the "Internal Revenue Code of 1986" to conform to the current designation of U.S. tax law.

Because Switzerland is a party to European Union regulation 883/2004, which provides for the coordination of social security systems among States member to the European Economic Area and Switzerland, Article 2.2 provides that the laws to which the Agreement applies do not include treaties and other international agreements--for example, either country's bilateral social security agreements with third countries or multilateral agreements. The purpose of this provision is to ensure that in cases where a person has periods of coverage in the United States and Switzerland and periods of coverage in a third country with which the United States or Switzerland has a social security agreement, periods from all three countries may not be combined under the Agreement to meet U.S. or Swiss benefit eligibility requirements. (See Part III.)

Article 2.3 provides that the Agreement will automatically apply to any future U.S. or Swiss legislation that modifies the laws in Article 2.1. The Agreement will apply to legislation that creates new categories of beneficiaries or new benefits only if both the United States and Switzerland agree.

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PART II

General Provisions

ARTICLE 3

Personal Scope

Unless otherwise provided, this Agreement shall apply to:

- a. nationals of either Contracting State,
- b. refugees who reside in either Contracting State,
- c. stateless persons who reside in either Contracting State,
- d. other persons, including family members and survivors, with respect to the rights they derive from persons in letters a, b and c of this Article, and
- e. **for the application of Articles 7, 8 paragraph 3, 9 to 12, 20 to 26 and 29, to any person regardless of nationality.**

Article 3 specifies five categories of persons to whom the Agreement applies: (1) U.S. or Swiss nationals, (2) refugees residing in either Contracting State, (3) stateless persons residing in either Contracting State, (4) persons, regardless of nationality, who derive rights through any of the above (such as family members and survivors), and (5) nationals of other countries. See Article 1.1(b), 1.1(i), and 1.1(j) for definitions of "national," "refugee" and "stateless person." Article 3(e) extends the provisions of the Agreement that eliminate dual social security taxation, protect the confidentiality of exchanged information, and deal with claims handling to nationals of other countries.

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ARTICLE 4

Equality of Treatment

1. Unless otherwise provided in this Agreement, persons designated in Article 3 letters a, b and c who reside in the territory of a Contracting State shall, in the application of the laws of that Contracting State, receive equal treatment with nationals of that Contracting State.

Article 4.1 provides that the Competent Authorities will accord any U.S. or Swiss national, stateless person or refugee who resides in the United States or Switzerland the same treatment regarding benefit rights under that country's social security laws as that country accords its own nationals. This provision would serve to eliminate discrimination based solely on a person's nationality. However, it would not affect restrictions that a country imposes on benefit eligibility or payment because the person is not lawfully present or was not authorized to work in that country.

Article 4 does not affect the coverage provisions of either country's laws that are addressed in Part III of the Agreement. Further, Article 18.5 obligates the United States to apply Article 4 only to the extent authorized by section 233(c)(4) of the Act, which requires that provisions in U.S. international social security agreements concluded pursuant to section 233 be consistent with the other provisions of title II of the Act.

2. Unless otherwise provided in this Agreement, family members and survivors of a national of a Contracting State who reside in the territory of a Contracting State shall, in the application of the laws of that Contracting State, receive equal treatment with family members and survivors of a national of that Contracting State.

Article 4.2 extends the equality principle established in Article 4.1 to workers' dependents and survivors residing in either country.

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ARTICLE 5

Portability of Benefits

Unless otherwise provided in this Agreement, benefits payable under the laws of one of the Contracting States shall be paid to nationals of the other Contracting State as well as to their family members and survivors, who are resident in the territory of a third State, on the same terms and to the same extent as to the nationals of the first Contracting State resident in the territory of this third State or to their family members and survivors.

Article 5 provides that each country will pay benefits to nationals of the other country and to their family members and survivors when they reside outside both countries. This paragraph removes certain restrictions on the payment of benefits which one country may impose on nationals of the other country or on their dependents and survivors when they reside in a third country. In accordance with Article 18.5, this provision would remove restrictions for the United States only to the extent authorized by section 233(c)(2) and (4) of the Act.

ARTICLE 6

Application of National Laws

This Agreement shall not prevent the application of provisions of the laws of either Contracting State concerning benefits that are more favorable to the persons listed in Article 3.

Article 6 assures that anyone who receives or could receive benefits without the application of the Agreement will receive at least the same benefit amount under the Agreement.

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PART III

Provisions Concerning Applicable Laws

ARTICLE 7

Coverage Provisions

1. Unless otherwise provided in Part III of this Agreement, a person of any nationality who is employed in the territory of either Contracting State shall be subject, with respect to employment in that territory, to the laws on compulsory coverage of the Contracting State where the person is employed and, in determining the amount of contributions payable under the laws of that Contracting State, no account shall be taken of any income the person may receive from employment in the territory of the other Contracting State.
2. Where a person of any nationality is in the service of an employer having a place of business in the territory of a Contracting State and is sent by that employer to the territory of the other

Article 7.1 establishes a basic territoriality rule, which stipulates that ordinarily a person's employment in one country will be compulsorily covered by only that country. Thus, employment that would otherwise be covered under the laws of both countries will remain covered under the system of the country where the worker is employed, and will be exempt from coverage under the system of the other country.

Article 7.1 further provides that in determining the amount of contributions due in one Contracting State, the Agency of that Contracting State will not consider income earned in the other Contracting State. This does not have an effect on the United States because, under the basic territoriality rule in existing totalization agreements, the United States does not compute a worker's social security taxes based on income for work performed in the other totalization agreement country. However, because even under the basic territoriality rule, the Swiss advise that a worker's social security taxes would be computed based on income for work performed in the United States, the final clause of Article 7.1 precludes a person covered under Swiss social security for employment performed in Switzerland from having to pay Swiss contributions on earnings from work performed in the United States in the same year.

Under Article 7.2, an employee who normally works for an employer located in the United States or in Switzerland who is temporarily transferred to work in the other country for the same employer (or an

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Contracting State for a period not expected to exceed 5 years, the person shall be subject to the laws on compulsory coverage of only the first Contracting State as if he or she were employed in its territory. For purposes of applying this paragraph in the case of an employee who is sent from the territory of the United States by an employer in that territory to the territory of Switzerland, that employer and an affiliated company of the employer (as defined under the laws of the United States) shall be considered one and the same, provided that the employment would have been covered under United States laws absent this Agreement.

affiliate of that employer as described in Section 3121(l) of the Internal Revenue Code) will continue to pay social security taxes to the country from which the employee transferred. This rule will apply only if the employer expects the transfer to last 5 years or less.

3. Paragraph 2 of this Article shall apply where a person who has been sent by his or her employer from the territory of a Contracting State to the territory of a third State, and who is compulsorily covered under the laws of that Contracting State while employed in the territory of the third State, is subsequently sent by that employer from the territory of the third State to the territory of the other Contracting State.

Under Article 7.3, the provisions of Article 7.2 will apply even if an employee does not transfer directly from one country to the other but first transfers to work in a third country.

4. A person of any nationality who is self-employed in the territory of one or both Contracting States and who is a resident of one Contracting State shall be subject to the laws on compulsory coverage of only the Contracting State in whose territory the person resides.

Article 7.4 eliminates dual coverage and contributions with respect to self-employment. It provides that, with respect to the self-employment, self-employed residents of Switzerland will pay social security taxes only under Swiss laws and that self-employed U.S. residents will pay social security taxes only under U.S. laws.

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5. **Where the same activity is considered to be self-employment under the laws of one Contracting State and employment under the laws of the other Contracting State, that activity shall be subject to the laws of only the first Contracting State if the person is a resident of that State, and to the laws of only the other Contracting State in any other case.**

Article 7.5 eliminates dual coverage in cases where the laws of one country consider a person's work activity self-employment while the laws of the other consider it employment. Under Article 7.5, a person who is a resident of the country that considers the work self-employment will pay social security taxes only under that country's laws. A person who is not a resident of the country that considers the work self-employment will pay social security taxes under the laws of the other country.

ARTICLE 8

Government Employment

1. Part III of this Agreement shall not apply to the categories of persons listed in the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, and of the Vienna Convention on Consular Relations of April 24, 1963.

Article 8.1, which provides coverage rules applicable to employees of the U.S. and Swiss Governments, is the same in both the old and new agreements. It stipulates that, in general, the coverage provisions of the Agreement will not apply with respect to Government employment to the categories of persons mentioned in the Vienna Conventions on diplomatic and consular relations. The Conventions, to which both the United States and Switzerland are parties, apply to members of the staff of a diplomatic or consular mission, including the diplomatic, consular, administrative, and technical staffs; family members of such staff who form part of their households; the domestic service staff of the mission; and private servants employed by the members of such missions.

In general, the Vienna Conventions exempt such persons from social security coverage and contributions under the laws of the host country unless specific arrangements waive their immunity from taxation. Persons whose immunity such arrangements waive would be subject to the laws of the host country, including the coverage provisions of this Agreement.

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2. Nationals of the United States employed by the Government of the United States in the territory of Switzerland who are not exempt from Swiss laws by virtue of the Conventions mentioned in paragraph 1, shall be subject to the laws on compulsory coverage of only the United States. For the purpose of this paragraph, employment by the United States Government includes employment by an instrumentality thereof.
3. An employee of any nationality of a public service in Switzerland who is posted to the territory of the United States shall be subject only to Swiss laws.

Article 8.2 provides that if a U.S. national works for the U.S. Government in Switzerland but is not exempt from Swiss coverage by virtue of the Vienna Conventions (for example, because the person does not work in a diplomatic or consular mission), the person will be subject only to U.S. laws. This provision applies not only to U.S. Government employees, but also to persons working for a U.S. Government instrumentality.

Article 8.3 provides that if the Swiss Government sends a Swiss civil servant to work in the United States and that person is not exempt from U.S. coverage by virtue of the Vienna Conventions, the person will be subject only to Swiss laws. This provision applies to career civil servants, as well as persons contracted to work for the Government of Switzerland.

ARTICLE 9

Airline Employees

Traveling employees of any nationality of air transportation companies who perform work in the territories of both Contracting States and who would otherwise be covered under the laws of both Contracting States shall, with respect to that work, be subject to the laws of only the Contracting State in the territory of which the company has its headquarters. However, if such employees reside in the territory of the other Contracting State, they shall be subject to the laws of only that State.

Under Article 9, a member of the flight crew of an aircraft operating between the United States and Switzerland who would otherwise pay social security taxes under the laws of both countries will pay social security taxes only under the laws of the country in which the company has its headquarters. However, if the employee resides in the other country, he or she will pay social security taxes under the laws of that country.

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ARTICLE 10

Seafarers

A person of any nationality employed as an officer or member of a crew on a vessel which flies the flag of one Contracting State and who would otherwise be covered under the laws of both Contracting States shall be subject to the laws of only the Contracting State whose flag the vessel flies. The activity pursued on a vessel which flies the Swiss flag shall be deemed to be an activity pursued on the territory of Switzerland. A vessel which flies the flag of the United States is one defined as an American vessel under the laws of the United States.

Under Article 10, a person employed on a U.S. or Swiss ship who is covered under the laws of both the United States and Switzerland will be covered only under the laws of the country whose flag the ship flies. Article 10 provides that a ship flies the flag of the United States if it is an American vessel as defined in section 210(c) of the Act. Under that definition, an American vessel is one that is documented or numbered under U.S. law or one that is not documented or numbered under the laws of any country if its crew is employed solely by one or more U.S. citizens or residents or corporations organized under Federal or state law.

ARTICLE 11

Family Members

1. Where in application of Part III a person of any nationality remains subject to the laws of one Contracting State while working in the territory of the other Contracting State, the same applies to the spouse and the children, of any nationality, residing with that person in the territory of the second Contracting State, provided that they are not gainfully employed themselves in the territory of this Contracting State.
2. Where in the application of paragraph 1 Swiss laws apply to the spouse and children, they are insured in the Swiss old-age, survivors' and disability insurance.

Absent the Agreement, the Swiss social security program covers all residents of Switzerland. Article 11.1 assigns social security coverage and taxation for spouses and children who accompany a worker exempted from host country coverage under the provisions of Part III. If a spouse or child resides with an exempted worker, the spouse or child will be subject only to the laws of the country where the worker pays social security taxes, unless the spouse or child works in the host country. Thus, Swiss law will not cover a spouse or child who resides with a worker exempted from Swiss social security coverage unless the spouse or child works in Switzerland.

Under Article 11.2, spouses and children who are residing in the United States, but who are subject to the laws of Switzerland based on Article 11.1, are covered under and will pay contributions to the Swiss

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old-age, survivors and disability insurance system.

ARTICLE 12

Exceptions

The Competent Authority of one Contracting State may grant an exception to the provisions of Part III of this Agreement or an extension of the period in Article 7 paragraph 2 of this Agreement in the interest of particular persons or categories of persons, if the Competent Authority of the other Contracting State agrees, provided that the affected person or persons will be subject to the laws on compulsory coverage of one of the Contracting States.

Under Article 12, either country may grant an exception to the coverage rules of Part III of the Agreement or extend the temporary period provided for in Article 7.2, if the other country agrees and the person involved remains subject to the coverage laws of one of the countries. The Competent Authorities may grant such an exception or extension on behalf of an individual worker or on behalf of all workers employed under similar circumstances, e.g., in the same profession or for the same employer. This provision permits the Competent Authorities to correct anomalous coverage situations that may arise to the disadvantage of workers or to eliminate dual coverage in unforeseen circumstances.

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PART IV

Provisions on Benefits

CHAPTER 1

Application of Swiss Laws

ARTICLE 13

Exceptions to Equality of Treatment

Part IV establishes the basic rules for determining entitlement to and the amount of U.S. and Swiss benefits in the case of people who have periods of coverage in both countries. The new Agreement makes no substantive change in the original Agreement's rules for determining U.S. benefit eligibility or amounts, but does modify several Swiss benefit provisions.

The Swiss social security system provides health insurance (called 'sickness') benefits, accident and occupational disease and injury benefits, traditional old-age, survivors and disability benefits, military service and maternity earnings replacement benefits, occupational old-age, survivors and disability benefits, family allowances and unemployment insurance. The scope of the Agreement includes the traditional and occupational old-age, survivors and disability benefits schemes. Persons who meet the applicable eligibility requirements

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qualify for Swiss social security system benefits. Such requirements may include a minimum coverage period or date of coverage qualifier. Finally, Switzerland's social security system provides needs-based (extraordinary) benefits subject to income limits. These are within the scope of the Agreement, although similar U.S. income support benefits are not.

Switzerland built its social insurance program around a three-pillar system, which includes a basic, (ordinary) mandatory pay-as-you-go old-age pension scheme, a mandatory occupational pension scheme and voluntary individual accounts. Both mandatory pillars provide for voluntary coverage for certain workers not subject to the general rule of mandatory coverage. Further, both mandatory pillars require contributions from employers and covered employees and self-employed persons to qualify for benefits.

FIRST PILLAR

OLD-AGE BENEFITS

The first pillar applies to all persons residing in Switzerland or gainfully employed in Switzerland. To be eligible for benefits, a person must have one year of contributions. Under the first pillar, the full retirement age is 65 for men and 64 for women. Early retirement is possible at one or two years before retirement age. A deferred old-age benefit is possible from one to five years after full retirement age. A deferred benefit provides an increased benefit amount that takes into account the period during which the worker was eligible for a benefit but not yet receiving it. Child's benefits based on the old-age benefit are payable if the child is under the age of 18 or if the child is in military or vocational training and is not yet age 25. These cannot exceed 60 percent of the maximum monthly old-age benefit per child. Child's benefits are not payable to early retirees for the period between early and full retirement age. The

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monthly benefit consists of a fraction of the minimum old-age benefit (fixed amount) and a fraction of the determining average annual income (variable amount). The average annual income consists of indexed income from paid employment (the contributions of persons without gainful employment are counted as income from paid employment), with bonuses for child rearing and service as a caregiver.

SURVIVORS BENEFITS

To qualify for survivors benefits, a widow must be caring for a child or be 45 years old and married for at least five years when widowed. She receives 80 percent of the benefit of the deceased worker. Surviving divorced spouses may qualify under certain conditions. Widows benefits stop if the widow remarries prior to full retirement age. A widower caring for a child under the age of 18 receives 80 percent of the benefit of the deceased worker. Orphan's benefits are payable to surviving children under age 18 (or age 25 if the child is in military or vocational training). Orphan's benefits are 40 percent of the old-age benefit amount, or a maximum of 60 percent if both parents are deceased. Surviving same-sex registered partners are treated as widowers.

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DISABILITY BENEFITS

The first pillar finances disability benefits under the same pay-as-you-go scheme that administers old-age and survivors benefits. The old-age and survivors compensation fund addresses any fluctuations in funding available to the disability program, and covers the same persons. Disability benefits require a minimum of three years of contributions. They are payable six months after the filing date to covered persons age 18 and one month or older who qualify. Qualification requires permanent or long-term full or partial earning capacity loss due to a physical, mental or psychological health impairment persisting after treatment and rehabilitation. Disability may result from a congenital

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disease, or from sickness or an accident. The monthly disability benefit consists of a percentage of the old-age benefit determined by the percentage degree of disability. Disability benefits are 100 percent of the old-age benefit with more than 69 percent disability; 75 percent with 60-69 percent disability; 50 percent with 50-59 percent disability and 25 percent with 40-49 percent disability. A complete disability benefit results when the disabled person's work history includes contributions over the same number of years as his or her age cohort. A partial benefit is payable if the number of years of contributions is lower than that of the disabled person's age cohort. Benefits are no longer payable when disability ends, the disabled person qualifies for an old-age benefit or when he or she dies.

SECOND PILLAR

OLD-AGE BENEFITS

The second pillar occupational old-age benefits scheme applies to employees over the age of 24, covered under the first pillar and earning an annual salary above a specified amount. Persons not mandatorily covered and the self-employed may opt to contribute into the second pillar. While it is not possible to qualify without coverage, there are no minimum contribution requirements to qualify for second pillar benefits. Under the second pillar, men must contribute from age 25 to 65 and women from age 25 to 64 to qualify for a full benefit. As under the first pillar, the full retirement age is generally 65 for men, and 64 for women, although individual pension fund regulations may specify a single retirement age regardless of gender. Early retirement as early as age 58 is possible if individual pension fund regulations so provide, and lump sum payments are possible under certain conditions. Child's benefits are payable for children under age 18 who would qualify for an orphan's benefit in the event of the insured person's death (or age 25 if the child is in military or vocational training). The child's benefit amount is the

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same as the second pillar orphan's benefit, for each child.

SURVIVORS BENEFITS

To qualify for survivors benefits, a surviving spouse must be caring for a child, or be 45 years old and married for at least five years when widowed. The surviving spouse may receive a maximum benefit of 60 percent of the retirement or disability benefit the deceased would have received. A childless surviving spouse under the age of 45 receives a lump sum benefit equal to three years' benefits. Surviving divorced spouses may qualify under certain conditions. Surviving spouse benefits stop if the surviving spouse remarries prior to full retirement age. Orphan's benefits are payable to surviving children under age 18, (or age 25 if the child is in military or vocational training). Each surviving child's benefit is 20 percent of the full disability benefit the deceased would have received, for each child. Swiss law treats surviving same-sex registered partners as surviving spouses.

DISABILITY BENEFITS

The second pillar disability benefit scheme applies to employees older than 17 with earnings above a specified amount. Persons not mandatorily covered and the self-employed may opt to contribute into the second pillar. Second pillar pension funds cover earnings within a particular range called the 'coordinated salary'. Second pillar funds may cover earnings below the specified amount, but may not cover earnings beyond a specified limit. Persons at least 40 percent disabled under first pillar rules and covered at disability onset qualify. The monthly disability benefit consists of a percentage of the second pillar old-age benefit. This includes consideration of theoretical earnings for the years

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between disability and retirement age. Benefit levels are subject to the percentage degree of disability. Second pillar disability benefits are 100 percent of the second pillar old-age benefit with more than 69 percent disability; 75 percent with 60-69 percent disability; 50 percent with 50-59 percent disability and 25 percent with 40-49 percent disability.

Article 4 shall not apply to Swiss laws:

- a. on the voluntary old-age, survivors' and disability insurance;
- b. on old-age, survivors', and disability insurance of Swiss nationals who are gainfully occupied abroad in the service of the Swiss Confederation or organizations in the meaning of subparagraph 1(c) of Article 1a of the Federal law on old-age and survivors' insurance; and
- c. on the voluntary old-age, survivors' and disability insurance for Swiss nationals employed by organizations in the meaning of subparagraph 4(b) of Article 1a of the Federal law on old-age and survivors' insurance.

Article 13 provides three general exceptions to Article 4's equal treatment provision with respect to Swiss social security laws. First, Article 4 does not apply to voluntary coverage under the ordinary, mandatory old-age, survivors' and disability insurance pension scheme. Such coverage is available to Swiss nationals and nationals of European Union (EU) countries who live outside of Switzerland in non-EU countries and whom Swiss law previously compulsorily covered for at least 5 years without interruption. With respect to voluntary coverage under the mandatory occupational pension scheme, Article 4 will also not apply to salaried workers ineligible for mandatory coverage, or to self-employed people under the same pension scheme. Second, Article 4 does not apply to coverage under the ordinary, mandatory old-age, survivors' and disability insurance pension scheme for Swiss Government employees working abroad or persons employed abroad by certain international aid organizations receiving substantial support from the Swiss Government. Finally, Article 4 does not apply to voluntary coverage for Swiss nationals under the ordinary, mandatory old-age, survivors' and disability insurance pension scheme if they work for certain international organizations in Switzerland to which Swiss law grants privileges, immunities and terms including exemption from obligatory coverage.

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ARTICLE 14

Totalization for Swiss Benefits

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1. Where a person does not meet the requirements for entitlement to an ordinary pension from the Swiss disability insurance solely on the basis of the periods of coverage completed according to Swiss laws, the Agency shall take into account, for the acquisition of the right to benefits, United States periods of coverage, as long as these periods do not overlap with those completed according to the Swiss laws.
2. Where the periods of coverage completed according to Swiss laws do not amount to one year, paragraph 1 does not apply.
3. The amount of the benefits shall be determined solely on the basis of the periods of coverage completed according to Swiss laws. The calculation is carried out according to Swiss laws.

Article 14 describes the process of combining periods of U.S. and Swiss coverage to determine eligibility for Swiss totalization benefits under the ordinary disability insurance pension program. It stipulates that where a person has completed at least 1 year of Swiss ordinary disability insurance pension coverage, Switzerland will add U.S. quarters of coverage to the person's Swiss coverage in determining whether the person meets the minimum requirements for ordinary disability benefits. This 1-year coverage requirement is similar to the U.S. 6 quarters of coverage requirement in Article 18.1. Switzerland will not count quarters of coverage that coincide with periods of coverage already credited under Swiss laws.

Article 14.3 provides that where entitlement to a Swiss ordinary disability insurance pension benefit is established based on combined U.S. and Swiss periods of coverage, Swiss law shall consider only periods of coverage credited under Swiss laws in determining the amount payable.

Note: Changes in Swiss laws after the previous Agreement entered into force eliminated the requirement for persons to have current coverage under the Swiss system at the time of disability onset for entitlement purposes.

ARTICLE 15

Rehabilitation Measures

1. United States nationals, who, immediately prior to eligibility for rehabilitation measures have been liable to pay contributions to the Swiss old age, survivors' and disability

Article 15.1 provides that in order for U.S. nationals to qualify for rehabilitation measures under the Swiss ordinary old-age, survivors' and disability insurance pension scheme, they generally must contribute to

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insurance, shall be entitled to such measures as long as they are physically present in Switzerland.

the scheme immediately prior to eligibility, and must be physically present in Switzerland.

2. United States nationals, who are not gainfully employed and who, immediately prior to eligibility for rehabilitation measures have not been liable to pay contributions to the Swiss old age, survivors' and disability insurance because of their age, but nevertheless have been insured under this insurance, shall be entitled to such measures as long as they are domiciled in Switzerland, if, immediately prior to eligibility for the measures they have resided in Switzerland without interruption for at least one full year. Minor children shall, moreover also be entitled to such measures if they are domiciled in Switzerland and if they have either been born disabled there or have resided there without interruption since birth.

Some U.S. nationals may not have worked and may not have coverage under the Swiss ordinary old-age, survivors' and disability insurance pension scheme immediately prior to eligibility for the scheme's rehabilitation measures because of their age. (Compulsory coverage under Swiss ordinary old-age, survivors' and disability insurance ends with the month of attainment of age 65 for men, age 64 for women.) In this case, Article 15.2 provides an alternative requirement of Swiss domicile and one uninterrupted year's Swiss residence immediately before rehabilitation measures eligibility. Further, minor children with Swiss domicile can qualify for rehabilitation measures if they were born disabled in Switzerland or resided there from birth without interruption.

3. United States nationals residing in Switzerland who leave Switzerland for a period not exceeding three months shall not be deemed to have interrupted their residence in Switzerland within the meaning of paragraph 2.

Under Article 15.3, in applying any of the residency tests of Article 15.2 to a U.S. national, an absence from Switzerland of a period of three months or less will not constitute a period of interruption in Swiss residence.

4. A child who is a United States national and who is born disabled in the United States to a mother who:

- a. is domiciled and insured in Switzerland; and
- b. was absent from Switzerland for not more than 2 months before the birth;

shall be treated as a child born disabled in Switzerland. In

Article 15.4 establishes that Swiss laws will treat as a child born disabled in Switzerland any child who is a U.S. national born disabled in the United States to a Swiss-domiciled mother insured under the Swiss ordinary old-age, survivors' and disability insurance scheme, if the mother is absent from Switzerland 2 months or less before the child's birth. Further, with respect to the mother and child referred to in the previous sentence, Swiss ordinary disability insurance benefits will cover expenses incurred outside of Switzerland for the first three months post partum in caring for a congenitally handicapped child, provided the

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the case of a congenitally handicapped child, Swiss disability insurance shall also be responsible for meeting expenses incurred abroad during the first three months after the birth to the same extent as it would have been required to meet these in Switzerland.

Swiss ordinary disability insurance system would have had to meet these expenses in Switzerland.

5. Paragraph 4 shall apply mutatis mutandis to a child born disabled outside the territory of the Contracting States; in such case, the Swiss disability insurance shall be responsible for meeting expenses incurred in the third State only if the measures had to be awarded there on an emergency basis due to the state of health of the child.

Article 15.5 extends the stipulations of Article 15.4 to children born in a third country, provided the accrual of expenses referred to in Article 15.4 was on an emergency basis due to the health of the child.

ARTICLE 16

Extraordinary Pensions

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1. **United States nationals shall, under the same conditions as Swiss nationals, be entitled to receive a Swiss extraordinary survivors' pension, disability pension or old age pension which replaces a disability or survivors' pension if, immediately before the date from which they claim the pension they have resided in Switzerland for a continuous period of not less than five years.**
2. **For the purpose of paragraph 1:**
 - a. **no account shall be taken of any period during which the persons concerned were exempted from the Swiss old age, survivors' and disability insurance; and**
 - b. **a period of residence in Switzerland shall not be regarded as interrupted if the absence from Switzerland is not more than three months in any calendar year. The period of three months may be extended in exceptional cases.**
3. **The refund of contributions paid under Swiss laws and lump sums in accordance with Article 17 shall not prevent the granting of extraordinary pensions in accordance with paragraph 1. However, in such cases, the lump sum paid out shall be deducted from the amount of pension to be paid out.**

Extraordinary pensions under the Swiss system are flat rate, needs-based benefits payable to Swiss nationals in Switzerland who do not qualify for ordinary social security pensions or whose ordinary pensions are smaller than the amount of an extraordinary pension. Under Article 16, U.S. nationals will qualify for the extraordinary survivors', disability or old-age pension that replaces an ordinary disability or survivors' pension if they reside in Switzerland continuously for five years before filing for the pension. Unlike the prior Agreement, this Agreement provides, in Article 16.2(a), that periods during which a person was exempt from making contributions to the Swiss ordinary old-age, survivors' and disability insurance schemes will not be subtracted from periods of Swiss residence for purposes of calculating the continuous five years provided in Article 16.1. Further, under Article 16.2(b), the Swiss Agency will not consider an absence from Switzerland for three months or less in a calendar year a break in residence for purposes of meeting the continuous five year period.

Under Article 16.3, a refund of contributions will not prevent the payment of extraordinary pensions under Swiss laws if the claimant meets the conditions of Article 16. This is an exception to the general rule precluding such payment in Article 17.4. These needs-related pensions are payable due to old-age, disability or death. Although Switzerland pays the extraordinary pensions even to people who may never have contributed to the Swiss system, the old-age, survivors' and disability insurance funds finance extraordinary pensions. It would be inequitable to those Swiss contributors who had not received a refund of their contributions if U.S. nationals could qualify for extraordinary pensions after having their contributions refunded. Article 16.3 provides, therefore, that U.S. nationals who receive Swiss extraordinary pensions after receiving a contribution refund will have the amount of their refunded contributions deducted from their pensions.

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ARTICLE 17

Lump Sum Payments

1. If a United States national or his or her survivor who does not reside in Switzerland is entitled to an ordinary partial pension under the Swiss old age and survivors' insurance which is equal to not more than 10 percent of the corresponding ordinary full pension, that person shall be granted instead of the partial pension, a lump sum which corresponds to the capitalized value of the pension payable under Swiss law when the insured event occurs. If a U.S. national or his or her survivor, who received such a partial pension, permanently leaves Switzerland, that person shall also be granted a lump sum which corresponds to the capitalized value of that pension at the time of departure.

In order to avoid paying very small pension amounts, Article 17.1 requires that any U.S. national residing outside Switzerland who qualifies for a Swiss partial ordinary old-age and survivors' insurance pension amounting to 10 percent or less of the corresponding ordinary full pension will receive instead a lump sum based on the capitalized value of the pension at entitlement. Article 17.1 applies this requirement to a U.S. national who, already receiving such a partial pension, departs Switzerland permanently. In this case, however, the lump sum granted corresponds to the capitalized value of the partial ordinary pension at the time of departure from Switzerland.

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2. If the ordinary partial pension is equivalent to more than 10 percent but not more than 20 percent of the corresponding ordinary full pension, a U.S. national or his or her survivor who does not reside in Switzerland or who is permanently leaving Switzerland may opt between having the pension paid or a lump sum. This option shall be made during the course of the procedure to determine the pension if the entitled person is staying outside Switzerland when the insured event occurs, or when leaving the country, if the entitled person already received a pension in Switzerland.
3. In the case of a married couple where both spouses have been insured under the Swiss insurance, the lump sum is paid only when both spouses are eligible to a pension.
4. When the lump sum has been paid out by the Swiss Agency no further claims can be asserted against that Agency in respect of previous contributions paid or of corresponding periods of coverage.
5. Paragraphs 1 to 4 shall apply mutatis mutandis to ordinary pensions of the Swiss disability insurance provided that:
 - a. the person, who has entitlement, has attained the age of 55 years; and
 - b. the Swiss insurance does not require any further verification of the fulfillment of the conditions concerning the disability of that person.

Article 17.2 applies to U.S. nationals residing outside Switzerland or permanently departing Switzerland. Such persons whose Swiss ordinary partial pension amount will exceed 10 percent but not 20 percent of the full ordinary pension may opt to receive either periodic payments from Switzerland or a one-time lump sum payment. The beneficiary will choose the type of payment at entitlement to the pension or at departure from Switzerland, whichever is later.

Swiss laws provide different methods of calculating benefits for single and married persons. Under Article 17.3, if both spouses have coverage under the Swiss system, no lump sum payout as described in Article 17.1 is possible until both spouses are eligible to receive a Swiss ordinary partial pension.

Article 17.4 provides that once a worker elects to receive a lump sum benefit, neither previous contributions nor corresponding periods of coverage can count towards further benefit claims.

Article 17.5 stipulates that the provisions in paragraphs 1-4 of Article 17 also apply to Swiss ordinary disability insurance benefits, subject to two specific conditions for payment of the lump sum or pension. First, subparagraph (a) requires that the disabled person must have attained age 55. Second, subparagraph (b) establishes the further condition that the lump sum or pension is payable only if the Swiss Agency requires no additional verification of the person's disability.

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CHAPTER 2

Application of United States Laws

ARTICLE 18

United States Benefits

1. Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient periods of coverage to satisfy the requirements for entitlement to benefits under United States laws, periods of coverage completed under Swiss laws shall be taken into account to the extent they do not coincide with calendar quarters already credited as quarters of coverage under United States laws.
2. In determining eligibility for benefits under paragraph 1 of this Article, the Agency of the United States shall credit one quarter of coverage for every three months of coverage certified as creditable by the Agency of Switzerland to the extent that the months do not coincide with calendar quarters already credited as quarters of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.

Article 18 contains rules for determining U.S. benefit eligibility and amounts under the Agreement. Article 18 applies to people who have periods of coverage based on wages for employment or self-employment income, or periods of payment of contributions, under the social security system of Switzerland, and who have at least six quarters of coverage in the United States, but who do not have enough U.S. coverage to qualify for U.S. benefits. In such cases, SSA, in accordance with Article 18.1, will take into account periods of Swiss coverage insofar as these periods do not coincide with quarters of coverage already credited under U.S. laws.

Article 18.2 establishes the procedure that SSA will follow in converting periods of coverage under the Swiss system into periods of coverage under the U.S. system. The U.S. system measures periods of coverage in terms of calendar quarters, while the Swiss system measures coverage in months. Beginning in 1978, the U.S. bases quarters of coverage on the amount of a person's annual earnings (e.g., for 2013, \$1,160 in earnings equals one quarter of coverage).

Under Article 18.2, SSA will credit one quarter of coverage in a calendar year for every 3 months of Swiss coverage certified for that year by the Swiss Agency. However, SSA will not credit months of Swiss coverage that fall within a calendar quarter that SSA has already credited as a U.S. quarter of coverage. In addition, SSA will not credit more than

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3. Where entitlement to a benefit under United States laws is established according to the provisions of paragraph 1, the Agency of the United States shall compute a pro rata primary insurance amount in accordance with United States laws based on:
 - a. the person's average earnings credited exclusively under United States laws and
 - b. the ratio of the duration of the person's periods of coverage credited under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws.Benefits payable under United States laws shall be based on the pro rata primary insurance amount.
4. Entitlement to a benefit from the United States which results from paragraph 1 shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to a higher benefit without the need to invoke the provision of paragraph 1.
5. **Articles 4 and 5 of this Agreement shall be applied by the United States in a manner consistent with section 233(c)(4) of the United States Social Security Act.**

4 quarters of coverage for any calendar year.

Article 18.3 describes the method of computing U.S. benefit amounts when entitlement is established by totalizing (i.e., combining) periods of U.S. coverage and periods of Swiss coverage. Under the procedure outlined in Article 18.3, the amount of the worker's benefit depends on both the level of his or her earnings and the duration of his or her coverage under U.S. Social Security. SSA regulations (20 CFR 404.1918 as revised July 24, 1984) describe this computation procedure in detail.

The first step in the procedure is to compute a theoretical Primary Insurance Amount (PIA) as though the worker had spent a full coverage lifetime (i.e., full career) under U.S. Social Security at the same level of earnings as during his or her actual periods of U.S. covered work. SSA then prorates the theoretical PIA to reflect the proportion of a coverage lifetime completed under the U.S. program. SSA regulations define a coverage lifetime as the number of the worker's benefit computation years, i.e., the years used in determining a worker's average earnings under the regular U.S. national computation method.

Article 18.4 provides that when a worker who is entitled to a pro rata totalization benefit from the United States acquires additional U.S. coverage which enables him or her to qualify for an equal or higher benefit based solely on his or her U.S. coverage, SSA will pay the regular national law benefit rather than the totalization benefit.

Section 233(c)(4) of the Social Security Act requires U.S. international social security agreements to contain certain benefit and coverage provisions. Section 233(c)(2) permits agreements between the United States and another country to contain exceptions to the alien non-payment provisions of the Social Security Act for beneficiaries residing in the other country. In addition, section 233(c)(4) permits

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agreements to contain other provisions which are not inconsistent with the provisions of title II of the Social Security Act. Article 18.5 makes clear that where the only authority for the equality of treatment and benefit portability provisions contained in Articles 4 and 5 is section 233(c)(4), SSA will apply these provisions only to the extent they do not conflict with other provisions of title II.

PART V

Miscellaneous Provisions

ARTICLE 19

Administrative Arrangements

The Competent Authorities of the two Contracting States shall:

- a. Make all necessary administrative arrangements for the implementation of this Agreement and designate liaison agencies;
- b. Define the procedures for reciprocal administrative assistance, including the allocation of expenses associated with obtaining medical, administrative, and other evidence required for the application of this Agreement;
- c. Communicate to each other information concerning the measures taken for the application of this Agreement; and
- d. Communicate to each other, as soon as possible, information concerning all changes in their respective laws which may affect the application of this Agreement.

Article 19 outlines various duties of the Competent Authorities under the Agreement. Paragraph (a) authorizes and requires the Competent Authorities to conclude an Administrative Arrangement and take all necessary administrative measures to implement the Agreement as well as to designate liaison agencies. Paragraph (b) requires the Competent Authorities to establish jointly procedures for mutual administrative assistance in administering the Agreement. Paragraph (c) requires the Competent Authorities to notify each other of the measures they have taken unilaterally to implement the Agreement and paragraph (d) obligates the Competent Authorities to notify each other of any changes in their respective social security laws that may affect the application of the Agreement.

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ARTICLE 20

Mutual Assistance

The Competent Authorities and the Agencies of the Contracting States, within the scope of their respective authorities, shall assist each other in implementing this Agreement. This assistance shall be free of charge, subject to exceptions to be agreed upon in an administrative arrangement.

ARTICLE 21

Confidentiality of Exchanged Information

1. Unless otherwise required by the national statutes of a Contracting State, personal data transmitted in accordance with this Agreement to that Contracting State by the other Contracting State shall be used for purposes of administering this Agreement and the laws in Article 2 of this Agreement. The receiving Contracting State's national statutes for the protection of privacy and confidentiality of personal data and the provisions of this Agreement shall govern such use.
2. The Competent Authorities of the Contracting States shall inform each other about all amendments to their national statutes regarding the protection of privacy and confidentiality of personal data that affect the transmission of

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Article 20 provides authority for the two countries to furnish each other non-reimbursable assistance in administering the Agreement. Such assistance may include the taking of benefit applications and the gathering and exchange, including the electronic exchange, of information relevant to claims filed and benefits paid under the Agreement. Although Article 20 establishes a general principle that mutual administrative assistance will be free of charge, the provision authorizes the two sides to agree to exceptions, such as the exception regarding medical examinations in Article 8.2 of the Administrative Arrangement.

Both the United States and the Switzerland have statutes and regulations that govern disclosure and provide strict safeguards for maintaining the confidentiality of personal data that is in the possession of their respective Governments. In the United States, these statutes include the Freedom of Information Act, the Privacy Act, section 6103 of the Internal Revenue Code, and pertinent provisions of the Social Security Act and other related statutes. Article 21.1 provides that personal data which one country furnishes to the other under the Agreement will be protected in accordance with the applicable provisions of the privacy and confidentiality laws of the country that receives the personal data.

Article 21.2 provides that if either the United States or Switzerland modifies any of its statutes that regulate the privacy or confidentiality of personal data transmitted between the countries, the Competent Authority of the Contracting State that modified its statute must notify

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- personal data.
3. Any subject may request, and the Competent Authority or Agency requesting or transmitting personal data must disclose to that subject upon such request, the content, receiving institution, and duration of use of the subject's personal data and the purpose and legal grounds for which such data were used or requested.
 4. Agencies shall take all reasonable steps to ensure that transmitted personal data are accurate and limited to data required to fulfill the receiving Agency's request. In accordance with their respective national statutes, Agencies shall correct or delete any inaccurate transmitted personal data and any data not required to fulfill the receiving Agency's request, and immediately notify the other Agency of such correction or deletion. This shall not limit a subject's right to request such correction or deletion directly from the Agencies.
 5. Both the transmitting and the receiving Agency shall effectively protect personal data against unauthorized or illegal access, alteration, or disclosure.
 6. Unless otherwise required by the national statutes of a Contracting State, employers' information transmitted
- the Competent Authority of the other Contracting State.
- Article 21.3 protects a person's right to request particular information about any of his or her personal data requested from or transmitted to the United States or Switzerland under the Agreement. Article 21.3 also provides that when a person requests such information about his or her personal data from a country, that country must provide the requested information to the person.
- Article 21.4 provides that both the United States and Switzerland will ensure the accuracy of personal data transmitted between the two countries and will limit the transmission of personal data to only that information necessary to satisfy the other country's request.
- However, if one country later discovers that it transmitted or received inaccurate personal data or additional personal data not required to satisfy a country's request, the country that discovers the discrepancy will correct or delete the personal data in question and immediately notify the Agency of the other country. The United States and Switzerland will perform such correction or deletion in accordance with their respective statutes governing alteration and destruction of data.
- Article 21.4 also recognizes the right of a person to directly request that either Agency correct or delete any of his or her own personal data that he or she discovers to be inaccurate or not required to satisfy a Contracting State's request.
- Under Article 21.5, both the United States and Switzerland agree to protect the integrity, privacy, and confidentiality of personal data when receiving or transmitting such data under this Agreement.
- The United States and Switzerland agree to apply the provisions in Article 21 to information received from employers, including but not

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between Contracting States in accordance with this Agreement shall be used for purposes of administering this Agreement and the laws in Article 2 of this Agreement. The receiving Contracting State's national statutes for the protection and confidentiality of employers' information and the provisions of this Agreement shall govern such use.

limited to, companies, corporations, and affiliates as defined in section 3121(l) of the Internal Revenue Code. This provision provides protection with regard to additional types of information supplied to the Agencies, such as business information provided in connection with a request for a certificate of coverage. (See Article 3 of the Administrative Arrangement)

ARTICLE 22

Documents

1. Where the laws of a Contracting State provide that any document which is submitted to the Competent Authority or an Agency of that Contracting State shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to corresponding documents which are submitted to the Competent Authority or an Agency of the other Contracting State in the application of this Agreement.
2. Copies of documents which are certified as true and exact copies by the Agency of one Contracting State shall be accepted as true and exact copies by the Agency of the other Contracting State, without further certification. The Agency of each Contracting State shall be the final judge of the probative value of the evidence submitted to it from whatever source.

Article 22.1 provides that if the laws of one country exempt documents submitted in connection with a social security claim from fees or charges, that exemption will also apply if such documents are sent to the other country by or on behalf of a claimant or beneficiary.

If the Agency of one country certifies that a copy of a document it furnishes to an Agency of the other country is a true and exact copy of an original document, the other country will accept this certification. Nevertheless, each country will remain the final judge of the probative value of any documents submitted to it.

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ARTICLE 23

Correspondence and Language

1. The Competent Authorities and Agencies of the Contracting States may correspond directly with each other and with any

Article 23.1 authorizes direct correspondence between the Competent Authorities and Agencies of the two countries and between these bodies

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- person wherever the person may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in the writer's language.
2. An application or document may not be rejected by a Competent Authority or Agency of a Contracting State solely because it is in a language of the other Contracting State.
3. The notices of decisions of an Agency or a tribunal which, under the laws of a Contracting State, require personal delivery may be transmitted directly by registered letter to a person in the territory of the other Contracting State.
- and any person with whom they may need to communicate. The correspondence may be in either country's language.
- The Competent Authorities and Agencies of each country may not reject an application or document because it is in a language of the other country. SSA already accepts applications and documents written in any language.
- Swiss law requires the formal serving on the individual of some Swiss official documents, such as adverse appeal decisions. For persons residing abroad, this requires transmitting the documents through consular offices. Article 23.3 simplifies this procedure by permitting the transmission of such documents directly to the individual by registered mail. The provisions of this article have no effect on U.S. procedures.

ARTICLE 24

Applications

1. A written application for benefits filed with an Agency of one Contracting State shall protect the rights of the claimants under the laws of the other Contracting State if the applicant requests that it be considered an application under the laws of the other Contracting State.
- Under Article 24.1, a written application submitted to an Agency of one country will protect a claimant's right to benefits under the laws of the other country as if the application had been presented in the other country, provided the applicant expresses an intent to file for benefits in the other country when the application is filed.

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2. If an applicant has filed a written application for benefits with an Agency of one Contracting State and has not explicitly requested that the application be restricted to benefits under the laws of that Contracting State, the application shall also protect the rights of the claimants under the laws of the other Contracting State if the applicant provides information at the time of filing indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Contracting State.

An applicant who files an application with the Competent Institution of one country may not always be fully aware of his or her benefit rights in the other country. Article 24.2 provides that, in the absence of an expression of intent to file for benefits under the laws of only that country, the application will also protect the claimant's rights in the other country if the applicant indicates, at the time of filing, that the person on whose record benefits are claimed has been covered under the social security system of the other country.

3. An applicant may request that an application submitted to an Agency of one Contracting State be effective on a different date in the other Contracting State within the limitations of and in conformity with the laws of the other Contracting State.

Under Article 24.3, an applicant for benefits may specify that an application is to have a different effective date in the other country within the limits of the laws of the other country. This provision could affect benefit payment amounts, for example, for people who wish to take advantage of delayed retirement credit provisions under the other country's laws.

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ARTICLE 25

Appeals and Time Limits

1. A written appeal of a determination made by an Agency of one Contracting State may be validly filed with an Agency of the other Contracting State. The written appeal shall be decided according to the procedure and laws of the Contracting State whose decision is being appealed.

Both the United States and the Switzerland have formal procedures for appealing adverse determinations of their Agencies. Under Article 25.1, a claimant may file a written appeal of a decision by an Agency of one country with the Agency of that country or with the Agency of the other country. In either case, the appropriate Agency of the country whose decision an individual is appealing would consider the appeal based on its own laws and procedure.

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2. Any claim, notice or written appeal which must be filed within a given period of time with an Agency of one Contracting State shall be considered to have been timely filed if the claim, notice or written appeal has been filed within such period with a corresponding Agency of the other Contracting State. In such case, the Agency with which the claim, notice or written appeal has been filed shall indicate the date of receipt of the document on this document and transmit it without delay to the Agency of the other Contracting State.
3. With respect to Switzerland, appeals which must be filed within a given period of time with a tribunal in Switzerland shall be considered to have been timely filed if it is shown that the appeal has been filed within such period with the Agency or a court in the United States.

Article 25.2 provides that a claim, notice or written appeal that a claimant must file within a prescribed time limit with an Agency of one country will be considered filed on time if it is filed within such limit with an Agency of the other country. The Agency with which the claimant has filed the claim, notice or written appeal shall transmit it immediately to the Agency of the other country, indicating on its face the date the Agency received the document.

Appeals which must be filed within a time limit with a Swiss court and which the claimant presents within the time limit to SSA or a U.S. court will be considered to have been timely filed with the Swiss court. However, U.S. courts incur no obligations because of this provision.

ARTICLE 26

Currency

The amount of any benefit due in accordance with the provisions of this Agreement may be paid in the currency of the Contracting State whose Agency is responsible for such benefit.

The Agencies may pay benefits under this Agreement in the currency of the paying country. The normal U.S. practice is to pay benefits in U.S. dollars.

ARTICLE 27

Resolution of Disagreements

Any disagreement regarding the interpretation or application of this Agreement shall be resolved by consultation between the Competent Authorities.

Article 27 obligates the Competent Authorities to attempt to resolve any dispute between them regarding the Agreement through direct consultation or negotiation.

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ARTICLE 28

Supplementary Agreements

This Agreement may be amended in the future by supplementary agreements which, from their entry into force, shall be considered an integral part of this Agreement. Such agreements may be given retroactive effect if they so specify.

Article 28 provides that the Competent Authorities may amend this Agreement by concluding supplementary agreements, with possible retroactive application. After a supplementary agreement becomes effective, it will be considered an integral part of the Agreement.

PART VI

Transitional and Final Provisions

ARTICLE 29

Transitional Provisions

1. This Agreement shall also apply to events which occurred prior to its entry into force that are relevant to rights under the laws in Article 2 of this Agreement.
2. This Agreement shall not establish any claim to payment of a benefit for any period before its entry into force, or to a lump-sum death benefit if the person died before its entry into force.
3. Consideration shall be given to any period of coverage and any period of residence under the laws of either Contracting State

Under Article 29, the Agencies will consider events material to the determination of benefit rights such as marriage, death, disability or attainment of a certain age, which occur prior to the effective date of the Agreement, in applying the Agreement.

Under paragraph 2, the Agencies will pay benefits based on the Agreement for periods beginning with the date on which the Agreement enters into force. The U.S. will pay any lump-sum death payments provided by section 202(i) of the U.S. Social Security Act under the Agreement only if the death occurs on or after the Agreement's effective date. An identical provision was included in Article 22.2 of the original Agreement. Paragraph 8 of this Article provides for the maintenance of benefit rights established in accordance with the original Agreement.

In determining benefit eligibility and amounts under the Agreement, Article 29.3 provides for the consideration of periods of coverage

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| occurring before the entry into force of this Agreement, in order to determine the right to benefits under this Agreement. | occurring before the Agreement enters into force. |
| 4. This Agreement shall not apply to rights settled by a lump-sum payment or refund of contributions. | Until 1973, Swiss law permitted U.S. nationals to obtain a refund of their social security contributions if they had at least 1 year of Swiss contributions but less than the 5 years required for benefit eligibility. Under Article 29.4, neither the U.S. nor Switzerland will count periods of Swiss coverage based on contributions that Switzerland has refunded. |
| 5. Determinations made before the entry into force of this Agreement shall not affect rights arising under it. | Article 29.5 provides that a decision to award or deny a claim which either country rendered prior to the effective date of the Agreement will not prevent a person from filing a new application for additional benefits that may be payable as a result of the Agreement. |
| 6. This Agreement shall not result in the reduction of benefit amounts because of its entry into force. | Article 29.6 guarantees that this Agreement's entry into force will not reduce the amount of benefits already payable at the time the Agreement becomes effective. |
| 7. Upon the entry into force of this Agreement, the Agreement between the United States of America and the Swiss Confederation on Social Security and the Protocol of July 18, 1979, as well as the Supplementary Agreement between the two Contracting States of June 1, 1988, shall be terminated and replaced by this Agreement. | Article 29.7 provides that the new Agreement will replace the original Agreement, its Protocol and the Supplementary Agreement. This provision supersedes Article 25 of the current Agreement that requires that agreement to remain in force and effect until one year after a "denunciation" notification. |
| 8. Any benefit acquired by a person, or coverage determination issued, in accordance with the provisions of the Agreement between the United States of America and the Swiss Confederation on Social Security of July 18, 1979, shall be maintained. | Article 29.8 provides for the retention of any determination regarding social security coverage and taxation or any right to a benefit made under the original Agreement. |

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9. Any claim to benefits made but not finally adjudicated at the date upon which this Agreement comes into force shall be adjudicated according to the provisions of the Agreement between the United States of America and the Swiss Confederation on Social Security of July 18, 1979, if this gives the claimant a more favorable result.

Article 29.9 stipulates that the original Agreement will also apply in adjudicating claims filed but not finally adjudicated when the new Agreement enters into force if this is more favorable to the claimant. As explained in connection with Part IV, the new Agreement makes no substantive change in the original Agreement's rules concerning the determination of U.S. benefit eligibility or amounts. Article 29.9, therefore, has no significance with respect to U.S. benefits.

ARTICLE 30

Entry into Force, Duration and Termination

1. This Agreement shall enter into force on the first day of the third month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Agreement.
2. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its termination is given by one of the Contracting States to the other Contracting State.
3. If this Agreement is terminated, rights regarding entitlement to or payment of benefits acquired under it shall be retained; the Contracting States shall make arrangements dealing with rights in the process of being acquired.

Each country will follow its own constitutional procedures for approval of the new Agreement. In Switzerland, the Parliament will review it, and in the United States, the President will transmit the Agreement to the Congress for a review period of 60 session days, as required by section 233 of the Act. Once each country has completed its internal approval process, the two Governments will exchange written notification to that effect. The Agreement will enter into force on the first day of the third calendar month after the month in which both Governments have received the other Government's written notification.

Article 30.2 provides for the Agreement to remain in effect until the expiration of one calendar year after the year in which one of the countries provides notice of termination. The new Agreement substitutes the word "termination" for "denunciation" but makes no substantive change.

Article 30.3 provides that in the event of termination of the Agreement, a person will retain benefit rights acquired before termination. Special arrangements would determine the extent to which each country would recognize benefit rights in the process of being acquired at the time of termination—for example, periods of coverage that had not yet resulted

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in fully insured status.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed the present Agreement.

DONE at Bern on December 3, 2012 in duplicate, in the English and French languages, both texts being equally authentic.

The U.S. Ambassador to Switzerland and Liechtenstein, Donald S. Beyer, Jr., and the Director of the Swiss Federal Social Insurance Office, Jürg Brechbühl, signed the new Agreement on December 3, 2012 in Bern, Switzerland.

FOR THE GOVERNMENT
OF THE UNITED STATES
OF AMERICA

FOR THE SWISS
FEDERAL COUNCIL

Donald S. Beyer, Jr.

Jürg Brechbühl

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ADMINISTRATIVE ARRANGEMENT

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ADMINISTRATIVE ARRANGEMENT FOR THE IMPLEMENTATION OF THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE SWISS CONFEDERATION ON SOCIAL SECURITY

In conformity with Article 19 (a) of the Agreement on Social Security concluded on December 3, 2012 between the United States of America and Switzerland, hereinafter referred to as "the Agreement", the following provisions have been agreed upon:

CHAPTER 1 General Provisions

Article 1

Terms used in this Administrative Arrangement shall have the same meaning as in the Agreement.

Article 1 provides that the terms both the Agreement and this Administrative Arrangement use, whether the Agreement defines them or not, will have the same meaning as they have in the Agreement.

Article 2

1. Liaison agencies for the implementation of this Agreement shall be:

- (a) for the United States, the Social Security Administration;
- (b) for Switzerland, the Swiss Compensation Office and the Disability Insurance Office for insured people living abroad.

Article 2.1 designates the liaison agencies in each country that will have primary responsibility for coordinating implementation and administration of the coverage and benefit provisions of the Agreement. The Social Security Administration is the designated liaison agency for the United States, and the Swiss Compensation Office and the Disability Insurance Office for insured people living abroad are the counterpart liaison agencies for Switzerland.

ADMINISTRATIVE ARRANGEMENT

2. The Swiss Competent Authority or, with its consent, the Swiss liaison agency, and the United States liaison agency shall agree upon joint administrative measures and forms necessary for the implementation of the Agreement and this Administrative Arrangement.

CHAPTER 2
Provisions Concerning Coverage

Article 3

1. Where the laws of one Contracting State are applicable in accordance with any of the provisions of Part III of the Agreement, the agency of that Contracting State, upon request of the employer or self employed person, shall issue a certificate stating that the employee or self-employed person is subject to those laws and indicating the duration for which the certificate shall be valid. This certificate shall be proof that the employee or self-employed person is exempt from the laws on compulsory coverage of the other Contracting State.
2. The certificate referred to in paragraph 1 shall be issued:

in the United States: by the Social Security Administration; and

in Switzerland: by the competent compensation fund of the Old-Age and Survivors Insurance.

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Article 2.2 authorizes and requires the liaison agencies of the United States and Switzerland to agree upon those procedures and forms that they must use jointly for the implementation of the Agreement and Administrative Arrangement.

Under Article 3.1, the agency of the country whose social security coverage laws will continue to apply to a person in accordance with the various rules set forth in Part III of the Agreement will issue a certificate to that effect when an employer or a self-employed person requests one. Employers and self-employed persons should request certificates before work begins in the other country, whenever possible. On presentation to the appropriate agency of the other country, the certificate will serve as proof of the exemption of the person from the coverage laws of that country. Retroactive recovery of U.S. contributions paid with respect to services for which a coverage exemption applies shall be subject to the time limitations for refunds of taxes in the Internal Revenue Code.

The agencies that Article 3 of the Administrative Arrangement designates will issue certificates. The Social Security Administration will issue coverage certificates for the United States. The competent compensation fund of the Swiss Old Age and Survivors Insurance program will issue coverage certificates for Switzerland.

ADMINISTRATIVE ARRANGEMENT

3. Requests for an extension of the period of detachment or an exception according to Article 12 of the Agreement shall be submitted to the Competent Authority of the Contracting State whose coverage is requested.
4. The agency of a Contracting State which issues a certificate referred to in paragraph 1 of this Article shall furnish a copy of the certificate or agreed upon information from the certificate to the liaison agency of the other Contracting State as needed by the agency of the other Contracting State.

CHAPTER 3
Provisions Concerning Benefits

Article 4

1. In cases where Article 24 of the Agreement applies, the liaison agency of the Contracting State which has received an application for benefits under its laws shall inform the liaison agency of the other Contracting State of this fact without delay, using forms established for this purpose. It shall also transmit documents and such other available information as may be necessary for the agency of the other Contracting State to establish the right of the applicant to benefits according to the provisions of Part IV of the Agreement. In the case of an application for disability benefits it shall, in particular, transmit all relevant medical evidence in its possession concerning the disability of the applicant.

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The Competent Authorities designated in Article 1 of the Agreement will mutually determine extensions of temporary exemption periods and exceptions to the coverage rules as Article 12 of the Agreement provides. Persons seeking extensions or exceptions will direct their requests to the Competent Authority of the Contracting State in which they wish coverage.

Article 3.4 provides that the agency issuing a coverage certificate will furnish a copy of the certificate or information from the certificate to the liaison agency in the other country when needed.

Articles 4.1 and 4.2 outline the procedures the liaison agencies will follow for the exchange of pertinent information, including medical information, they need to process claims filed under the Agreement. The U.S. and Swiss liaison agencies will agree on special application forms that individuals who wish to file for benefits based on the Agreement will use.

ADMINISTRATIVE ARRANGEMENT

2. The liaison agency of a Contracting State which receives an application filed with an agency of the other Contracting State shall without delay provide the liaison agency of the other Contracting State with such evidence and other available information as may be required to complete action on the claim.
3. The agency of the Contracting State with which an application for benefits has been filed shall verify the accuracy of the information pertaining to the applicant and the applicant's family members. The types of information to be verified shall be agreed upon by the liaison agencies.

Article 5

In the application of Article 18 of the Agreement, the Swiss liaison agency shall notify the United States liaison agency of the months in which a person made contributions during any year in which periods of coverage were completed under Swiss laws. A record of the total number of months of contributions made in specific calendar years shall be provided where the actual months of coverage are not known.

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Article 4.3 deals with the verification of claims information. Both U.S. and Swiss laws require verification of certain information about individuals claiming benefits (e.g., age and family relationship to the worker) before either country can approve the claim. Article 4.3 provides that when a claimant files for benefits under the Agreement in one country, the agency of that country will verify the relevant information and inform the agency of the other country of its findings. The liaison agencies will agree upon the specific types of information needing verification.

The purpose of this provision is to expedite the claims process by avoiding the duplication of effort that would result if the agencies of both countries had to verify the same information. Although an agency may accept the findings of the other agency concerning the accuracy of information, it may at its discretion request documentary evidence to support those findings.

Article 5 provides that where totalization is necessary to establish a person's entitlement to U.S. benefits in accordance with Article 18 of the Agreement, the Swiss liaison agency will furnish the U.S. liaison agency a record showing the person's total periods of coverage under the Swiss system. This record will include the number of months of contributions and the actual dates of such contributions for each calendar year. Where Swiss records do not identify the actual months in which a person made contributions (which may occur for years prior to 1969), the Swiss liaison agency will certify only the total months of contributions credited to the person in each year.

ADMINISTRATIVE ARRANGEMENT

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ANNOTATIONS AND COMMENTS

CHAPTER 4 Miscellaneous Provisions

Article 6

1. In accordance with measures to be agreed upon pursuant to Article 2 of this Administrative Agreement, the agency of one Contracting State shall, upon request of the agency of the other Contracting State, furnish available information relating to the claim of any specified individual for the purpose of administering the Agreement or the laws specified in Article 2 (1) of the Agreement.
2. For the purpose of facilitation of the implementation of the Agreement and this Administrative Arrangement, the liaison agencies may agree on measures for the provision and transmission of the electronic exchange of data.

Article 7

The liaison agencies of the two Contracting States shall exchange statistics on the number of certificates issued under Article 3 of this Administrative Arrangement and on the payments made to beneficiaries under the Agreement for each calendar year in a form to be agreed upon. The data shall include the number of beneficiaries and the total amount of benefits, by type of benefit.

Article 6.1 provides that the agency of one country will, upon request, furnish claims-related information to the agency of the other country in accordance with agreed upon procedures. The agencies will agree upon such procedures, which will be consistent with the governing statutes of both countries.

Under Article 6.2, the liaison agencies of both countries may agree to implement electronic data exchanges to facilitate implementation of the Agreement and the Administrative Arrangement, provided the liaison agencies conduct such exchanges in accordance with the laws of each country governing the protection of privacy and confidentiality of personal data.

Article 7 provides for an exchange of statistics concerning the number of coverage certificates the agencies issue pursuant to Article 3.1 of this Administrative Arrangement and the payments the two countries make to beneficiaries under the Agreement.

Article 8

1. Where administrative assistance is requested under Article 20 of the Agreement, expenses other than regular personnel and operating costs of the Competent Authorities and agencies providing the assistance shall be reimbursed, except as may be agreed to by the Competent Authorities or liaison agencies of the Contracting States.
2. Where the agency of a Contracting State requires that a claimant or beneficiary submit to a medical examination, such examination, if requested by that agency, shall be arranged by the agency of the Contracting State in which the claimant or beneficiary resides, in accordance with the rules of the agency making the arrangements and at the expense of the agency which requests the examination.
3. Upon request, the agency of either Contracting State shall furnish without expense to the liaison agency of the other Contracting State any medical information and documentation in its possession relevant to the disability of the claimant or beneficiary.
4. Amounts owed under paragraphs 1 and 2 shall be reimbursed upon presentation of a detailed statement of expenses.

In accordance with Article 20 of the Agreement, the Competent Authorities and agencies of the two countries will provide each other with such administrative assistance as may be necessary to implement the provisions of the Agreement. Under Article 8.1, the requesting agency will pay expenses the other agency incurs in responding to requests for administrative assistance which require it to go outside its own organization--for example, to hire interpreters, conduct special field investigations, or arrange medical examinations--unless the Competent Authorities or liaison agencies agree on a different arrangement. The two countries will not reimburse expenses for regular personnel and operating costs.

Article 8.2 provides that where a medical examination is necessary to establish eligibility for or continuing entitlement to a country's benefits that are payable under the Agreement, and the claimant or beneficiary is in the other country, the agency of the other country will, upon request, arrange for the examination at the expense of the agency requesting the examination.

When the agency in one country requests medical information from the agency in the other country, the latter agency will furnish to the other country's liaison agency any pertinent medical records it has in its possession free of charge.

In order to receive reimbursement for the cost of administrative assistance, the agency which provides the assistance must furnish the requesting agency with a detailed statement of expenses.

ADMINISTRATIVE ARRANGEMENT

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ANNOTATIONS AND COMMENTS

Article 9

This Administrative Arrangement shall enter into force on the date of entry into force of the Agreement and shall have the same period of validity.

The Administrative Arrangement will enter into force on the same date as the Agreement and will remain in effect for the same period as the Agreement.

DONE at Bern on December 3, 2012, in duplicate in the English and French languages, the two texts being equally authentic.

The U.S. Ambassador to Switzerland and Liechtenstein, Donald S. Beyer, Jr., and the Director of the Swiss Federal Social Insurance Office, Jürg Brechbühl, signed the new Agreement on December 3, 2012 in Bern, Switzerland.

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For the Competent Authority
of the United States of America:

For the Competent Authority
of Switzerland:

Donald S. Beyer, Jr.

Jürg Brechbühl

REPORT TO CONGRESS
TO ACCOMPANY THE REVISED AGREEMENT
ON SOCIAL SECURITY
BETWEEN THE UNITED STATES OF AMERICA
AND THE SWISS CONFEDERATION

INTRODUCTION

The U.S. Ambassador to Switzerland, along with his Swiss counterpart, signed the original agreement on July 18, 1979, and the agreement entered into force on November 1, 1980. A subsequent supplementary agreement between the United States and Switzerland, signed on June 1, 1988 and effective October 1, 1989, amended the original agreement. We now need to make additional modifications, authorized under Section 233 of the Social Security Act (Act).

U.S.-Swiss Social Security Agreement

The social security agreement between the United States and Switzerland is one of 24 bilateral agreements the United States has concluded with foreign countries to provide limited coordination of the U.S. Old-age, Survivors, and Disability Insurance program with comparable programs of other countries. Like other U.S. social security agreements, the agreement with Switzerland has two main purposes. First, it eliminates dual social security coverage and taxation, i.e., the situation that occurs when a worker from one country works in the other country and is required to pay social security taxes to both countries on the same earnings (the agreement includes rules that assign a worker's social security coverage and tax liability to just one country). Second, the agreement helps prevent gaps in social security benefit protection for workers who divide their careers between the two countries. Under the agreement, workers and their family members can qualify for partial U.S. or Swiss benefits based on "totalized" (i.e., combined) work credits from both countries.

Revised Agreement

The revised agreement, which representatives of the U.S. and Swiss Governments signed on December 3, 2012, updates and clarifies several of the existing agreement's provisions. The amendments are necessary to account for changes in U.S. and Swiss law since the original and subsequent supplementary agreements entered into force. The revised agreement accomplishes the following:

- Changes the way each side defines terms in the text of the agreement;
 - Contains revised equality of treatment and benefits portability language that meets with current U.S. and Swiss laws and practices that the present agreement does not fully reflect;
-

- Expands personal scope and coverage arrangements language to correlate with contemporary U.S. and Swiss rules and practices;
- Adds a provision that the Swiss Government requested whereby U.S. nationals must now follow the same recently initiated minimum contribution period rules that Swiss nationals must meet to qualify for certain Swiss ordinary disability benefits;
- Provides language that allows, under certain conditions less restrictive than those of the existing agreement, U.S. nationals to qualify for Swiss flat-rate, needs-based benefits;
- Expands and updates the existing agreement's protections with respect to personally identifiable information;
- Provides important clarification on how the two sides treat documents and appeals they handle under the terms of the agreement.

The original U.S.-Swiss social security agreement consists of two separate instruments: a principal agreement and a related administrative agreement. The revised agreement, which the President is now transmitting to Congress for review in accordance with section 233(e) of the Act, likewise consists of two instruments:

- (1) a revised agreement amending the original U.S.-Swiss principal agreement; and
- (2) a revised administrative agreement amending the original administrative agreement for implementation of the principal agreement.

Accompanying this report is a paragraph-by-paragraph explanation of the revised agreement and administrative agreement (Annex A) with substantive revisions shown in bold type. Also included is the estimate required by section 233(e)(1) of the Act on the effect of the revised agreement on the income and expenditures of the U.S. Social Security program and the number of individuals affected by the agreement (Annex B).

MAIN PROVISIONS OF THE REVISED AGREEMENT

Updated Terms

The revised agreement updates a number of terms that have become anachronistic due to changes in the laws in both countries. For example, the revised agreement designates the Commissioner of Social Security as the Competent Authority under the agreement, whereas the original agreement designated the Secretary of Health, Education, and Welfare as the Competent Authority. The Department of Health and Human Services replaced the Department of Health, Education, and Welfare on May 4, 1980, and the Social Security Administration subsequently became an independent agency on March 31, 1995.

Further, the revised agreement adds the Northern Mariana Islands (NMI) to the definition of the territory of the United States under the agreement. Under the covenant establishing political union between the United States and the NMI, the U.S. Social Security system first applied to the NMI on January 1, 1987.

Swiss Disability Benefits

A recent change to Swiss law regarding disability benefits proved problematic under the existing U.S.-Swiss social security agreement. One of the consequences of the benefits provisions in the existing agreement is to allow U.S. nationals to receive an ordinary disability benefit with as little as one year of coverage in Switzerland. Previously, this had also been the case for Swiss nationals. However, the new Swiss legislation required a mandatory three years of coverage under the Swiss social security system in order to qualify for the ordinary disability benefit. Accordingly, under the existing agreement, U.S. nationals can receive the ordinary disability benefit on more favorable terms than Swiss nationals; the revised agreement provides equal treatment for U.S. and Swiss nationals.

The revised agreement also provides that persons may use U.S. Social Security coverage to meet the requirements necessary in order to qualify for a Swiss ordinary disability benefit. Additionally, physical presence, domicile, or residence in Switzerland may satisfy certain contribution requirements U.S. nationals must meet to qualify for related Swiss benefits. In some situations, U.S. nationals who qualify for Swiss disability benefits under the revised agreement may receive lump sums instead. It is the case, for example, if they do not reside in Switzerland or plan to leave permanently.

Safeguards for Personally Identifiable Information

The revised U.S.-Swiss social security agreement also includes more substantial provisions on the proper use, transmission, and receipt of personally identifiable information (or personal data) under the agreement. Article 10 of the original administrative agreement included a single paragraph on personal data. Article 21 of the revised agreement includes 6 paragraphs detailing how each country will protect personal data under the revised agreement. These expanded provisions not only provide greater safeguards against the unauthorized access, disclosure, or use

of personal data under the agreement, but also provide far greater clarity as to the remedial steps available in the event that personal data are incorrect or unnecessary for the purposes of implementing the agreement.



SOCIAL SECURITY
Office of the Chief Actuary

MEMORANDUM

Date: December 22, 2010 Refer To: TCC

To: Stephen C. Goss, Chief Actuary

From: Chris Chaplain, Actuary
Nettie Barrick, Actuary

Subject: Estimated Effects of a Potential Revision of the Totalization Agreement between Switzerland and the United States—**INFORMATION**

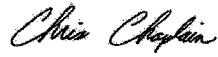
Totalization agreements between the United States and other countries are designed to eliminate dual coverage and taxation of the same work and to help prevent gaps in benefit protection for those who have worked in each country. The proposed revised agreement between the United States and Switzerland updates and clarifies provisions in the existing agreement. The revisions take into account changes in U.S. and Swiss law that have occurred since the original and subsequent supplementary agreement were implemented. This new agreement includes features common to most of the other 23 U.S. totalization agreements, such as equality of treatment and benefit portability language. Protection of personally identifiable information is also addressed in the new agreement. Certain revisions merely codify current practice.

Switzerland requested the original agreement be amended, in part, to reflect a change in the requirements for Swiss ordinary disability benefits. At the time the original agreement was adopted, both Swiss and U.S. nationals needed only one year of Swiss coverage to be eligible for Swiss ordinary disability benefits. Since that time, Swiss requirements have changed so that three years of coverage are needed by Swiss nationals. Under the revised agreement, U.S. nationals will also need three years of coverage. However, the new agreement provides that persons may use U.S. Social Security coverage to satisfy up to two years of this requirement.

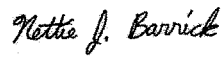
Additionally, the revised agreement slightly relaxes the residence requirements for U.S. nationals to receive Swiss rehabilitation benefits and Swiss flat-rate needs-based benefits. In particular, with respect to the former, physical presence, domicile or residence in Switzerland will satisfy the requirement. Another provision relates to whether Swiss ordinary benefit payments are paid as an annuity or a lump-sum for certain U.S. nationals who qualify for Swiss ordinary disability benefits under the new agreement. Each of these provisions will likely have only a small effect on Swiss benefit payments.

The revision of the agreement is estimated to result in a net cost to each of the U.S. and Swiss social security systems of less than \$500,000 each year through fiscal year 2019. The total net

cost through fiscal year 2019 is estimated to be less than \$500,000. The estimated effect on the long-range OASDI actuarial balance is negligible, that is, less than 0.005 percent of payroll.



Chris Chaplain



Nettie Barrick